

State of South Carolina ) In the Court of Common Pleas  
 )  
 County of Hampton ) Case No: 2017-CP-25-355

Richard Lightsey, LeBrian )  
 Cleckley, Phillip Cooper, et )  
 al., on behalf of themselves )  
 and all others similarly )  
 situated, )  
 )  
 Plaintiff(s), ) Deposition  
 )  
 vs. ) of  
 )  
 ) STEPHEN A. BYRNE  
 South Carolina Electric & Gas )  
 Company, a Wholly Owned )  
 Subsidiary of SCANA, SCANA )  
 Corporation, and the State of )  
 South Carolina, )  
 )  
 Defendant(s). )  
 )

Deposition of STEPHEN A. BYRNE, taken before  
 Heather R. Landry, CVR, Nationally Certified Verbatim  
 Court Reporter and Notary Public in and for the State  
 of South Carolina, scheduled for 9:00 a.m. and  
 commencing at the hour of 9:10 a.m., Tuesday, August  
 14, 2018, at the office of Richardson, Patrick,  
 Westbrook & Brickman, Mount Pleasant, South Carolina.

Reported by:

Heather R. Landry, CVR

Any court, party, or person who has purchased a transcript may, without paying a further fee to the reporter, reproduce a Copy or portion thereof as an exhibit pursuant to court order or Rule or for internal use, but shall NOT otherwise provide or sell a copy or copies to any other party or person without the express consent of the reporter and/or reporting agency.

APPEARANCES

For the Plaintiff(s):

J. Edward Bell, Esquire  
Gabrielle Sulpizio  
Bell Legal Group, LLC  
219 Ridge Street  
Georgetown, SC 29440

Joseph Preston "Pete" Strom, Jr., Esquire  
Strom Law Firm, LLC  
2110 Beltline Blvd.  
Columbia, SC 29204

Terry E. Richardson, Jr., Esquire  
Richardson, Patrick, Westbrook & Brickman, LLC  
P.O. Box 1368  
Barnwell, SC 29812

Gibson Solomons, III, Esquire  
Speights and Solomons  
100 Oak Street  
Hampton, SC 29924

Gregory Michael Galvin, Esquire  
Galvin Law Group, LLC  
P.O. Box 887  
Bluffton, SC 29912

For the Defendant SCE&G:  
David L. Balser, Esquire  
King & Spalding, LLP  
1180 PeachTree Street, NE  
Atlanta, GA 30309-3521

Videographer:  
Douglas A. Browne, VidSouth Production

1 Other Appearances:

2 James F. Wyatt, III, Counsel for Stephen Byrne  
Wyatt & Blake, LLP, Charlotte, NC

3 Matthew T. Martens, Counsel for Stephen Byrne  
4 Wilmer Hale, Washington, DC

5 Frank R. Ellerbe, III, Cental Electric Cooperative and  
Electric Cooperative of South Carolina

6 William C. Hubbard, Counsel for Santee Cooper  
7 Nelson Mullins, Columbia, SC

8 Julia Barrett, Counsel for SCE&G and SCANA  
King & Spalding, Atlanta, GA

9 Frank R. Ellerbe, III, Counsel Central Electric Coop  
10 and Electric Coop of South Carolina  
Robinson Gray, Columbia, SC

11 Leah Moody, Counsel for SCANA  
12 Law Office of Leah Moody, Rock Hill, SC

13 Nanette S. Edwards, Executive Director  
Matthew Richardson  
14 Ron Aiken  
Ryder Thompson  
15 Office of Regulatory Staff

16 Elton Ziggler, SCE&G, Public Service Commission

17 Byrony Hodges, Associate General Counsel for SCANA

18 Benjamin Hatch (ph) and Robert Woods, Counsel for  
Dominion Energy  
19 McGuire Woods, Norfolk, VA

20 Emory Smith, State of SC Lightsey and Cleckly  
Proceeding, Consolidated PSC Proceeding

21

22

23

24

25

1 INDEX OF EXAMINATION

2 Stipulations .....5  
 3 Examination By Mr. Bell .....6  
 4 Certificate .....236  
 5 Signature & Errata Pages .....237

6

7 INDEX OF EXHIBITS

8 [Exhibit No. 1](#) Contract Negotiations Letter .....78  
 9 [Exhibit No. 2](#) E-mail Correspondence .....137  
 10 [Exhibit No. 3](#) VC Summer Presentation .....143  
 11 [Exhibit No. 4](#) E-mail Correspondence .....153  
 12 [Exhibit No. 5](#) E-mail Correspondence .....159  
 13 [Exhibit No. 6](#) Letter .....170  
 14 [Exhibit No. 7](#) SCANA Release Document .....189  
 15 [Exhibit No. 8](#) E-mail Correspondence .....218

12

13 To view exhibits as a single PDF, click box to the  
 14 left.

14

15

16

17

18 **REPORTER'S LEGEND:**

19 -- [denotes interruption/change in thought]  
 20 ... [denotes trailing off/incomplete  
 21 thought or statement]  
 22 [sic] [denotes word/phrase that may seem strange or  
 23 incorrect; written verbatim]  
 24 (ph) [denotes phonetic spelling]  
 25 (unintelligible ) [denotes not capable of being  
 understood]  
 (indiscernible crosstalk) [denotes] multiple speakers  
 at the same time, not capable of  
 being understood]

25

STIPULATIONS

This deposition is being taken pursuant to  
the South Carolina Rules of Civil Procedure.

- - - - -

The reading and signing of this deposition is  
reserved by the deponent and counsel for the  
respective parties.

- - - - -

Whereupon,

**STEPHEN A. BYRNE**, being administered an oath  
of affirmation or duly sworn and cautioned to  
speak the truth, the whole truth, and nothing but  
the truth, testified as follows:

**Court Reporter:** State your full name for the  
record, please.

**Witness: Stephen A. Byrne.**

- - - - -

1 (Whereupon, the case caption was  
2 published and counsel noted their  
3 appearances for the record.)

4 - - - - -

5 EXAMINATION

6 BY MR. BELL:

7 Q Good morning, Mr. Byrne.

8 A Good morning.

9 Q Tell me what your understanding is of why we're  
10 here today.

11 A It's a deposition in a ratepayer case associated  
12 with the cancellation of the VC Summer nuclear  
13 project plants two and three.

14 Q Okay. So you are one of the executives, or were  
15 one of the executives, of I call it E&G for short,  
16 but -- and for SCANA. From your perspective, how  
17 did we get here today?

18 A From my perspective how did we get here today?  
19 The owners, which is SCE&G and Santee Cooper, had  
20 contracted with a consortium that originally  
21 consisted of Westinghouse and The Shaw Group to  
22 build a nuclear plant under an engineer procured  
23 construct arrangement, so an EPC contract. That  
24 EPC arrangement was partially fixed-price and  
25 partially not fixed-price in the beginning.

1 Through a series of negotiations, the fixed-price  
2 portion was increased.

3 Eventually, it was -- the EPC arrangement was  
4 entirely fixed-price when the owners exercised the  
5 fixed-price option with Westinghouse. At that  
6 point in time, the Consortium was no longer, so  
7 Westinghouse was the counter party and had brought  
8 in the Fluor Corporation to actually facilitate  
9 construction. That fixed-price option, from the  
10 owners' perspective, provided a lot of protections  
11 for the owners to complete the nuclear project.  
12 Westinghouse declared bankruptcy in March of 2017.  
13 That bankruptcy process meant that the fixed-price  
14 protections were going to go away, such that the  
15 companies SCE&G and Santee Cooper would now be  
16 responsible for the cost on more of a time and  
17 materials basis. So that loss of the fixed-price  
18 option meant that an evaluation needed to be done  
19 to determine what would be the cost and schedule  
20 to finish the plants. When that cost and schedule  
21 evaluation was completed it was determined that it  
22 was too high to finish both units, from a cost  
23 perspective, so the focus turned to a single unit.  
24 And when our partner Santee Cooper said that they  
25 were no longer going to participate, SCE&G

1 attempted to look for other partners. Absent  
2 that, they looked for some governmental  
3 assistance. When that didn't come, it was too  
4 expensive for SCE&G to complete the units, even  
5 one unit on its own. So a decision was made to  
6 cancel.

7 Q So how did we get -- with that scenario, how did  
8 we get -- and when I say we, as ratepayers, E&G,  
9 SCANA. I use that term collectively. How did we  
10 get there? What happened to make -- what caused  
11 all these problems? I'm trying to find out what  
12 your opinion is of the core either -- maybe get to  
13 the beginning of when it started in a minute, but  
14 what do you think is the -- put my finger on that  
15 and that's what caused this breakdown or this  
16 debacle or this bankruptcy or the problems? Tell  
17 me what you think.

18  
19 MR. BALSER: Object to form. Vague.

20  
21 A Let me answer it this way: I believe that had the  
22 fixed-price option not gone away, had the  
23 protections of the fixed-price not been lost, that  
24 the two companies would still be building those  
25 plants today. So fundamentally if that is the



1 case then it was the loss of the fixed-price  
2 contract, the loss of that protection. And I view  
3 that as protection for the company, for the  
4 customers, for the shareholders. Had that not  
5 gone away, the companies -- the two companies, I  
6 believe, would still be building those two plants  
7 today. So fundamentally, in my mind -- and you  
8 asked me what my opinion was. Fundamentally, I  
9 think it was the bankruptcy of Westinghouse that  
10 drove the loss of the fixed-price contract that  
11 forced the cancellation of those units.

12 Q Okay. You mentioned earlier that the contract at  
13 the original, at the beginning, had part fixed and  
14 part non-fixed. Now, were you part of the  
15 negotiations to finalize the EPC contract?

16 A I was.

17 Q Okay. So you can speak to that pretty much?

18 A Yeah. At least at a high-level I can speak to  
19 that. There was a negotiating team that I was not  
20 a part of. That negotiating team reported up  
21 through, through for me.

22 Q All right. And how many folks were on that team?

23 A Probably half a dozen.

24 Q Okay. Were they all with SCANA?

25 A There was some participation from Santee Cooper on

1           that team.

2       Q     Okay. How many people from Santee?

3       A     I think it was just one.

4       Q     One. Do you remember that person's name?

5       A     I believe that would have been Ken Brown.

6       Q     And do you recall the other four or five folks  
7           from SCANA?

8       A     I know Ron Clary was involved, Al Paglia was  
9           involved, Al Bynum was involved, Skip Smith was  
10          involved, and there are probably a couple of  
11          others that the names don't come to me at the  
12          moment.

13      Q     If you had access to the records, would you be  
14           able to produce the documents associated with the  
15           negotiating of the EPC contract?

16      A     I don't believe that I kept any of the records  
17           associated with their negotiations of the EPC  
18           contract.

19      Q     But those records would be at E&G, wouldn't they?

20      A     They should be. I don't know that to be the case  
21           for sure, but they should be.

22      Q     How many e-mails, Steve, did you have back then?  
23           Did you use a company e-mail? Did you have a  
24           personal e-mail?

25      A     I had a personal e-mail, but used the company's

1 e-mail for work-related things.

2 Q Okay. And what is your company e-mail address?

3 What was it at the time?

4 A It was sbyrne@SCANA.com.

5 Q And what was your personal e-mail at the time?

6 A Steve.a.byrne@gmail.com.

7 Q Any other e-mails?

8 A I don't have any other e-mail.

9 Q Do you have any Twitter or any other accounts?

10 A I don't use Twitter. I don't use Facebook.

11 Q Snapchat?

12 A I don't use Snapchat.

13 Q All right. If I were curious and wanted to know  
14 about those negotiations what would be some of the  
15 documents, if I were to go sit down in your  
16 conference room at the company and -- but what  
17 would those documents look like? You'd have  
18 e-mails back and forth, I assume?

19 A There certainly would be e-mails.

20 Q Okay. And you would have, I guess, someone  
21 writing memos and reports to you?

22 A Again, largely via e-mail.

23 Q Okay.

24 A Some of the debriefs that I would have received  
25 would have been face-to-face debriefs. And there

1 would have been -- I don't remember what they were  
2 termed, but basically negotiating -- negotiation  
3 points for the back and forth with  
4 Westinghouse and Shaw Group.

5 Q Do you remember -- and I know it's been a while,  
6 but can you remember and help me figure out the  
7 parts of the contract -- in general, not the  
8 specifics -- that were the non fixed-price parts?  
9 What areas that y'all were concerned about that  
10 you couldn't get a number on?

11 A It isn't that we couldn't get a number on, but  
12 there were some non fixed-priced portions of the  
13 contract. So the contract was arranged with a  
14 portion that was fixed, and fixed meant that there  
15 was -- that truly that, that there was no  
16 escalation on it; the price was the price. Then  
17 there was a section called firm, and firm meant  
18 that the price of the component or activity was  
19 fixed. But it was subject to an escalation factor  
20 of some kind, and there were three different types  
21 of escalation factors used.

22 Q And that's laid out the EPC contract?

23 A It is.

24 Q Okay.

25 A And then there was a trunch (ph) or bucket called

1 target. And target was estimated to the extent  
2 that it could be estimated. But the actual costs  
3 were going to be what the actual costs were. And  
4 probably the largest piece in target was labor.  
5 So the people that were going to be constructing  
6 the facility, that labor was in that target  
7 bucket. There was a time and materials portion of  
8 the EPC contract, or T&M. And then outside of the  
9 contract would have been owners' costs which --  
10 and separate from the contract was an EPC  
11 arrangement to build the transmission.

12 Q And that was not fixed?

13 A That was administered through another group, but I  
14 don't know what the percentages were. It may have  
15 been fixed. I can't remember what the  
16 arrangements were around that.

17 Q In a perfect world, at the beginning of this  
18 contract, your company gave the Public Service  
19 Commission the cost of this project. And in this  
20 perfect world, I assume y'all thought that would  
21 be the approximate cost of the contract. Is that  
22 correct?

23 A In the beginning the costs were estimated. And,  
24 as I pointed out, we had some that were fixed,  
25 some firm, some that were not even fixed or firm.

1           Largely the target bucket, T&M portion, was, you  
2           know, was a relative basis, small. Owners' costs  
3           were estimated and the transmission costs, again,  
4           were estimated through a separate company group  
5           that negotiated a separate EPC contract. So the  
6           costs were estimated. The escalation factors or  
7           inflation indices were selected and those were  
8           incorporated as part of that original file. So  
9           that in a perfect world, the costs that were  
10          estimated would have been the costs plus  
11          escalation that the project would have ended up  
12          with. There was an amount that was selected for  
13          contingency. And that contingency was removed.  
14          Some of the intervenors petitioned to have --  
15          petitioned the Supreme Court to have the  
16          contingency removed, and that was removed.

17    Q       Are there documents or notes or minutes or e-mails  
18           that would give me, again, if I'm starting over at  
19           the beginning, what the estimated cost, owners'  
20           cost, transmission, any the other variables would  
21           be? Do y'all have an estimate of what they would  
22           be?

23    A       Certainly there are -- there is documentation that  
24           would exist. I don't have that documentation.

25    Q       Sure.

1 A I should be clear that I, since I retired from the  
2 company, do not have access to the company's --

3 Q I get it.

4 A -- systems and do not have many of my e-mails from  
5 that time frame. So certainly there were would be  
6 documents that exist. The company and quarterly  
7 BLRA reports, a quarterly report on the project  
8 status that was required under the Base Load  
9 Review Act did publish what the costs were in  
10 those various cost categories so that you can see  
11 what the breakdowns -- what the total costs were.  
12 Now, the contractor did not want some of those  
13 cost categories to be advertised and requested  
14 that they be treated confidentially. So there's a  
15 confidential portion to those reports that would  
16 not show the specific breakdowns of each one of  
17 those little areas, but the totals are certainly  
18 there.

19 Q Give me an example of one of the areas that the  
20 contractor preferred to have a confidential  
21 submission on?

22 A The fixed portion of the contract.

23 Q And they were worried, I assume, that another job  
24 they were doing might look at that and get some  
25 inside information, if you will?

1 A That is certainly what was advertised to us as to  
2 their desire for confidential treatment for some  
3 of these cost categories. And Westinghouse, that  
4 counter party, and their consortium partner, Shaw,  
5 were in negotiations at that point in time with  
6 other utilities for the AP1000 design, their  
7 design reactor.

8 Q The total cost, however, would have included their  
9 confidential submission?

10 A That's correct.

11 Q Okay. And so what's the term you use, inflation  
12 factor or --

13 A Escalation.

14 Q -- escalation. Did the escalation anticipation  
15 include just inflation or did it include other  
16 things?

17 A The escalation, it's mostly an inflation number.  
18 They come from indices. It's possible that there  
19 are some other factors that go into those indices.  
20 I'm not sure that it's anything other than  
21 anticipated escalation.

22 Q Well, time was a big important matter for this  
23 project, wasn't it, timing of completion? Would  
24 you agree with that?

25 A Timing of completion was important? Yes, it was.



1 Q For several reasons. One would be the increased  
2 cost as you go down the road. That would be one?

3 A Timing associated with cost would be important,  
4 yes.

5 Q All right. And then timing to close the project  
6 or finish it, substantial completion, had a lot to  
7 do with the tax credit, didn't it?

8 A When the plant was finished, it wasn't necessarily  
9 tied to suspension of completion, but it was tied  
10 to in-service, what would have been qualified as  
11 production tax credits, yes.

12 Q So you had to have an in-service?

13 A In-service.

14 Q All right. And did you, at the beginning, believe  
15 that the project could be completed to qualify for  
16 tax credits?

17 A Yes.

18 Q And part of your ability to raise money and have  
19 investor participation was the potential tax  
20 credit?

21 A Certainly the tax credits were discussed with the  
22 financial community. I don't to what extent the  
23 tax credits were important to the financial  
24 community. Again, I'm not a financial expert. I  
25 don't work in the financial portion of the

1 company. The tax credits from the construction  
2 perspective obviously would come later. So the  
3 tax credits had to be earned after the plant was  
4 in service. So from the perspective of  
5 construction, I don't know to what to extent the  
6 financial community credited those or discounted  
7 those.

8 Q I'm using a ballpark that I've read and seen some  
9 things that there was anticipated \$2 billion tax  
10 credit. Is that roughly correct?

11 A So the production tax credit portion was estimated  
12 up front. And I believe that our financial group  
13 was using a tax-advantage number for that, which  
14 may be higher than the actual production tax  
15 credit number. So that what would be realized,  
16 again from a tax savings in addition to the tax  
17 credits themselves, would be higher.

18 Q Higher than the 2 billion?

19 A No, not higher than 2 billion. I think 2 billion  
20 was the tax advantage number.

21 Q All right. But that's the number that used in  
22 media publications, things like that?

23 A Correct.

24 Q Okay. Is that fairly close?

25 A Is it fairly close? Again --

1 Q You're telling me --

2 A -- the actual value --

3 Q I'm sorry --

4 A -- the actual -- Again, I'm not a financial  
5 witness. I'm not -- I don't work in the financial  
6 part of the company or didn't work in the  
7 financial part of the company, but there was a  
8 specific value for the tax credits themselves.  
9 But there was a tax advantage portion of that the  
10 company also recognized. I don't remember the  
11 exact value of that. Certainly the tax credit  
12 number would have been on the order of a billion,  
13 a billion-and-a-halfish. And then the tax  
14 advantages of that would have taken it to the  
15 \$2 billion.

16 Q I accept your statement that you're not a  
17 financial person. I'm even less so. So -- but I  
18 have read and understand something called ROI.  
19 You understand what that is, don't you, in the  
20 general sense?

21 A I do.

22 Q Okay. Well, in figuring out the ROI, the return  
23 on investment, after tax dollars are more valuable  
24 than taxable dollars, aren't they?

25 A Correct.

1 Q Okay. So your production tax credit that we're  
2 talking about, having that materialize in one way  
3 or the other would be important to an investor if  
4 they're looking at ROI, return on investment.  
5 Would that be true?

6 A Again, I'm not a financial expert. I don't know  
7 what the financial community -- how they view or  
8 perceive the production tax credits.

9 Q Well, let's look at it in kind of a -- this is  
10 only so I can understand it, but from a simple  
11 standpoint, if a company makes \$3 billion over  
12 some period of time and they have a \$2 billion tax  
13 credit over that period of time, then they would  
14 only have a billion dollars in taxable income  
15 versus \$3 billion. Would that be fair, in the  
16 simplest form?

17 A I suppose that's true.

18 Q Okay. And so you recognize, while you weren't a  
19 admittedly a financial person within the company,  
20 the importance of keeping the financial community  
21 happy about the project?

22 A Keeping the financial community happy? I don't  
23 know that I ever looked it as keeping a financial  
24 community happy. Certainly the financial  
25 community was important to financing the project,

1 financing the construction of the project. So  
2 certainly the company's ability to borrow money  
3 was important.

4 Q Okay. Do you recall when the first time you or  
5 anyone at the company ever notified the financial  
6 community that this project was in trouble?

7 A Specifically, I don't recall any specific dates  
8 about when a notification would have been made  
9 about the project being in trouble. The company  
10 and I believed that the project could be completed  
11 up to the point of the Westinghouse bankruptcy,  
12 which put into question both the cost and the  
13 schedule for completing the units.

14 Q Okay.

15 A So there was never a question about could the  
16 units be completed. I always believed that the  
17 units could be completed. The Westinghouse  
18 bankruptcy through threw doubt into time and  
19 schedule. And the company and I did make  
20 disclosures throughout the process about issues  
21 that were going on. So those issues did not,  
22 though, mean that the plant could not be  
23 completed. So --

24 Q I'm sorry.

25 A So early on there were issues with getting the

1 license by the time assumed in the contract to  
2 obtain a license. And by license, I mean a  
3 combined construction and operating license issued  
4 by the Nuclear Regulatory Commission. There was  
5 one other -- I think it was Army Corps of  
6 Engineers -- permit that was lagging early on.  
7 There were issues with module fabrication. I  
8 should say submodule fabrication, particularly  
9 coming from a facility in Lake Charles, Louisiana.  
10 That facility was problematic. It was originally  
11 called SMS, Shaw Modular Solutions. Shaw was  
12 purchased by Chicago Bridge & Iron in 2013 I  
13 believe it was. And then the name changed to CB&I  
14 Lake Charles, Chicago Bridge & Iron Lake Charles  
15 facility or CB&I Lake Charles. That facility had  
16 become what was a problem and it was not  
17 delivering the submodules to the site in a timely  
18 manner. I know that was disclosed in testimony  
19 before the Public Service Commission and in our  
20 BLRA quarterly reports.

21 If you transition to a little later, the --  
22 once was the module issues started to sort  
23 themselves out and were being worked under a plan,  
24 the efficiency of the contractor, the constructor  
25 at the site, at this time would have been Chicago

1 Bridge & Iron, or CB&I, had become an issue. And  
2 that was disclosed to financial community, Public  
3 Service Commission --

4 Q What time frame?

5 A -- in quarterly reports. I'm talking about the  
6 time frame for that would have been probably in  
7 the 2014 through '17 time frame.

8 Q All right. So let's talk about that just a  
9 minute. The module issue was disclosed to the  
10 investors and the public. Is that correct? Is  
11 that what you said?

12 A Yes.

13 Q Okay. In its simplest form, you basically were  
14 aware and disclosed that you were not getting your  
15 modules or your submodules in time which was  
16 creating a problem on the construction site and  
17 with kind of a ripple effect. Do you agree with  
18 that?

19 A That's correct.

20 Q Okay. You were the highest executive at E&G that  
21 was over the construction over the project? You  
22 were the top executive?

23 A At E&G, yes. Obviously, I reported to the chief  
24 executive officer.

25 Q And today, when I say E&G, I'm including, unless I

1 say we're not, we're talking about both companies,  
2 okay?

3 A Both companies being SCANA and SCE&G?

4 Q SCANA, yes.

5 A Okay.

6 Q Okay. I understand the difference, but from the  
7 standpoint of making it easier to not have to  
8 repeat it. If there's a separation on some  
9 answer, let me know.

10 A So at -- well, at SCANA then the chief executive  
11 officer was the highest-ranking officer with  
12 responsibility of this project. So I reported to  
13 the chief executive officer.

14 Q Was that Mr. Marsh?

15 A Mr. Marsh.

16 Q Okay. But day-to-day, who was the highest level  
17 executive over the project?

18 A Day-to-day with sole project responsibility would  
19 have been a VP for nuclear construction. There  
20 was a transition there I think in 2014. It would  
21 have gone from Ron Clary to Ron Jones. So, again  
22 this -- for most of the time frame that we're  
23 talking about here, you said '14 through '17, that  
24 would have been Ron Jones. Mr. Jones reported to  
25 the chief nuclear officer. The chief nuclear



1 officer had responsibility for construction and  
2 for the operating unit. So at that same location,  
3 the VC Summer location in Jenkinsville, there's  
4 been a plant operating there since 1982. So  
5 Mr. Archie as the chief nuclear officer had  
6 responsibility for both. Mr. Archie reported to  
7 me. I had responsibility for that and for also  
8 hydro operations, field procurement, and  
9 transmission.

10 Q Did you go to the site very often?

11 A I did go to the site. It depends on your  
12 definition of very often. But I went to the site  
13 I would say -- I estimated about 15 percent of my  
14 time would be spent out at the site location in  
15 Jenkinsville.

16 Q Okay. So I'm sitting there, a fly on the wall in  
17 your office. How often would you get a report or  
18 have a meeting or something in regards the  
19 project?

20

21 MR. BALSER: Object to the form.

22

23 A How often would I have a meeting or some other --

24 Q Let me ask you -- let me restate that. I assume  
25 you got reports about the project?

1 A I did.

2 Q Most of them by e-mail, I assume?

3 A Majority by e-mail.

4 Q And did you have a regular weekly or monthly  
5 report you got?

6 A Yes. Yes, to both. So there was a weekly  
7 construction report issued. There was a monthly  
8 construction report issued. Quarterly, there were  
9 what we'll term executive steering committee  
10 meetings. That was -- did not include the  
11 contractor or the construction contract. It was  
12 just SCE&G, Santee Cooper personnel. Quarterly,  
13 there were what were called president's meetings.  
14 A bit of a misnomer; it was really the CEOs. So  
15 that was for the CEOs of the four companies  
16 involved with construction: Santee Cooper, SCANA,  
17 Westinghouse, and then obviously it changed  
18 between CB&I and Fluor. There were biweekly phone  
19 calls with the contractor, with Westinghouse, and  
20 CB&I and then Westinghouse and Fluor. So there  
21 were a number of communication forms on the  
22 project.

23 Q Your weekly report, did that come from Ron Clary  
24 or Ron Jones?

25 A The weekly report, I actually started to get that

1 weekly report probably in the 2014 or '15 time  
2 frame. That weekly report would generally come  
3 from an engineer on the project, but it would come  
4 out of the new nuclear development project. But  
5 generally, it would come from one of the engineers  
6 on the project.

7 Q Prior to '14, did you get any kind of regular  
8 reports?

9 A I wasn't getting the weekly reports. I believe I  
10 was getting monthly reports.

11 Q Who produced those?

12 A There were two monthly reports produced. One was  
13 produced by SCE&G and one was produced by the  
14 Consortium. And then after the Consortium  
15 dissolved it was Westinghouse.

16 Q If we were to have available today all of those  
17 weekly and monthly reports, give me your best  
18 estimate -- I know you can't remember exact dates,  
19 but if you can, that's fine. Give me your best  
20 estimate to when you started getting notice that  
21 there were problems on the construction projects.

22 A With any megaproject, and particularly with a  
23 nuclear project, there are going to be issues or  
24 problems probably every day. And so issues and  
25 problems would have been a norm from the time the

1 project started to the time the project ended. So  
2 the fact that there were issues or problems was  
3 not unusual in the way that, you know, that both  
4 the Consortium and the owners dealt with those was  
5 to list or try to address all of those problems at  
6 each opportunity and each report.

7 Q I get it that there's always going to an issue  
8 with construction, especially a job this size.  
9 But they started -- you would agree with me,  
10 wouldn't you, Steve, that there turned out to be  
11 some systemic problems in this project? It  
12 started and could just never get fixed. You agree  
13 with that?

14 A Would I agree that the problems could never get  
15 fixed? No, I wouldn't agree with that.

16 Q Well, can you agree that they never got fixed?

17 A I would agree that there were problems that  
18 existed that were going to exist from the time the  
19 project started to the time the project ended.  
20 Now, the fact that the project was canceled means  
21 that they didn't get fixed. But that doesn't mean  
22 that they could have never been fixed.

23 Q Well, I appreciate your listening to my question  
24 probably better than I gave it. So never get  
25 fixed is kind of a vague term, isn't it?

1

2

MR. BALSER (SCE&G): Objection. Vague.

3

4

Q So, I mean, y'all had problems with the number of  
employees out there that weren't doing anything,  
didn't it? And again, that's a general term. If  
you have a PF factor for employees that's two and  
three and four, I'm using the term they're not  
doing anything efficiently or productively. Would  
that be better?

10

11

A There certainly was an issue with the craft  
efficiency.

12

13

Q Right. And then there were other problems, as  
well, weren't there?

14

15

A I think I enumerated a few of those earlier. So  
the submodule production issues; there were some  
regulatory problems with the Nuclear Regulatory  
Commission. But yes, there were those issues.  
Issues of interpretations between Westinghouse and  
the Nuclear Regulatory Commission on the design.  
There were design changes that would come from the  
Chinese projects. I'm guessing you're aware that  
the Chinese were building AP1000s as well. And  
there were four plants under construction in China  
that started ahead of the US projects.

20

21

22

23

24

25

1 Q Did you visit those projects?

2 A I did.

3 Q Do you think we might need to go over there and  
4 take a look at them and do some more depositions  
5 over there?

6 A That's up to you.

7 Q I'm circling back to the comments you made where  
8 you said "this project could have been completed"  
9 and there were two conditions you said that were  
10 not met: One, there was a bankruptcy and, two,  
11 Santee pulled out or said enough is enough. You  
12 agree?

13 A Well, I said that there was a loss of the  
14 fixed-price protection. The bankruptcy was what  
15 premised that loss of the fixed-price protection.  
16 Now, had Westinghouse in the bankruptcy said we're  
17 going to honor your contract then, you know, that  
18 would have been -- they could still operate in  
19 bankruptcy, and still are operating in bankruptcy  
20 today.

21 Q And we're going to get into some details later. I  
22 just am trying to get an overview of where we are.  
23 I've never built a nuclear plant; I've built some  
24 smaller things. But I can't imagine building a  
25 house without plans for a roof. And I noticed in

1       some of the documents there are literally  
2       thousands of drawings that were not completed.  
3       And the construction going on and on and the  
4       engineers can't work, the craft can't work,  
5       because they don't have a completed set of plans.  
6       When did you first become aware that the plans  
7       were not completed?

8     A     The company was aware that the plans were not  
9       complete from the start.

10    Q     Okay.

11    A     So it's not unusual on a construction project for  
12       the plans to not be complete when construction  
13       starts. In fact, I would say it's unusual on a  
14       construction project, on an industrial  
15       construction project, that plans are complete when  
16       the construction starts. So SCE&G has built power  
17       plants, converted power plants, added scrubbers,  
18       built cooling towers. In all of those projects,  
19       underneath VC arrangements and engineer, procure,  
20       construct arrangements were started before the  
21       design was actually completed.

22    Q     Have y'all completed a construction project  
23       successfully?

24    A     Yes, certainly.

25    Q     Give me a couple examples.

1 A The Cope Power Plant is the last coal-fired power  
2 plant that the company built. The Jasper  
3 combined-cycle power plant in Jasper County  
4 combined-cycle and natural gas power plant. The  
5 water -- Wateree Plant, the south part of Richland  
6 County, cooling towers were added to take it off  
7 the river and make it closed-cycle. Both the  
8 Wateree and the Williams Plant here in the  
9 Charleston area added scrubbers probably seven,  
10 eight years ago.

11 Q The building of the Cope and the combined-cycle  
12 plants are two different plants, right?

13 A Two different plants.

14 Q Were they built with plans not completed?

15 A Yes.

16 Q And how long after the start were the plans  
17 finished and finalized?

18 A I'm not sure. I can't remember.

19 Q But in order to finish the project, they had to  
20 finish the plans?

21 A Yes.

22 Q And in order to get a component finished within  
23 the project, you had to finish the component  
24 plans?

25 A Yes.



1 Q Okay.

2 A Yes.

3 Q And on a progression of starting at A, B and C,  
4 and kind of the step-by-step progress in a  
5 construction project, you've got to at least get  
6 the first-thing-you-do plans ready. And as you go  
7 forward, you got to keep your planning, your plans  
8 up with the construction. Would you agree with  
9 that?

10 A Yes.

11 Q Okay. And that didn't in this VC Summer project,  
12 did it?

13 A Certainly there were design-related issues that  
14 had impacts on construction. The first part of  
15 the project is civil where you're doing ground  
16 clearing, excavation, pouring mud mats and base  
17 mats and those kinds of things. So the project --  
18 the engineering of a project did become an issue.  
19 Again, design changes from China, Nuclear  
20 Regulatory Commission impact, so not all the fault  
21 of Westinghouse or the fact that the design was  
22 not a hundred percent complete when the -- when  
23 construction started.

24 A lot of those changes were forced by a new  
25 process, a new regulatory scheme for constructing

1       these plans. So if you go back to the '60s,  
2       '70s, '80s when the majority of the nuclear  
3       plants in this country were actually constructed  
4       that was under the Title 10 of the Code of Federal  
5       Regulations subpart 50, often times called 10CFR  
6       Part 50 or Part 50. The construction going  
7       forward, the NRC changed the licensing regime, and  
8       it's now 10CFR Part 52. So construction under  
9       Part 52 is different than it was under Part 50.  
10      And one of the impacts of that is that there are  
11      many categories where under the old regime, under  
12      Part 50, you had a construction permit. So you  
13      constructed and if pipes didn't line up, you just  
14      change -- you made the pipes line up and then you  
15      changed the drawings later. You as-built the  
16      drawings later, which is pretty standard on almost  
17      any kind of construction. Even on a house you can  
18      change things as-built later.

19             Because you didn't have an operating license,  
20      so once the construction was finished, you then  
21      apply for an operating license. So there were two  
22      sets of hearings, two opportunities for  
23      intervention, but it gave you more latitude during  
24      the construction process. The new Part 52 was  
25      intended to actually add certainty by removing one

1 of the sets of hearings and one of the  
2 opportunities for intervention. So when you got  
3 this license from the NRC, it was a combined  
4 construction and operating license. The NRC took  
5 the position that because you had an operating  
6 license, anything that was significant to that  
7 license, when you found that things didn't line up  
8 during construction, you couldn't just change  
9 them. You had to go and change the license first  
10 then you could change the line up. So that added  
11 a degree of complexity. So there were a number of  
12 licensed changes that had to be made on the  
13 project before construction could continue. So  
14 that was a part of the new -- I think an  
15 unintended consequence of the new 10CFR Part 52.

16 Q Who would you recommend that I talk to you that  
17 would be able to give me a -- that was involved in  
18 these design issues that would have a good handle  
19 on some details in regards to that? Are you able  
20 to do that?

21 A A better person would probably be the person who  
22 was over engineering at the time for SCE&G. That  
23 would have been Brad -- Robert B. Stokes.  
24 Mr. stokes was the general manager for  
25 engineering. You know, I'm sure there are

1 Westinghouse folks. I don't know who's at  
2 Westinghouse any longer or not at Westinghouse any  
3 longer that could talk to the issues that  
4 Westinghouse had with the regulator and coming to  
5 grips with the Part 52.

6 Q Is Stokes still around, Mr. Stokes?

7 A I'm not sure where he is. I don't know if he's  
8 still with the company or not with the company any  
9 longer.

10 Q Okay. So if the project could have been  
11 completed, as you mentioned without the bankruptcy  
12 and the fixed-price and the pullout of Santee  
13 Cooper, you would have recommended that it go  
14 forward and be completed?

15 A Yes, sir.

16 Q At what cost?

17 A Again, if it was -- if it was not the bankruptcy,  
18 or even if there were the bankruptcy and not the  
19 loss of the fixed-price option, then the bulk of  
20 the cost would have been fixed. So provided that  
21 Westinghouse honored their fixed-price contract,  
22 then it's the owner's cost piece that would have  
23 been higher. The transmission piece, the company  
24 could have completed the transmission. And it was  
25 largely complete. All of the transmission

1 treatment two was complete when the project was  
2 terminated. I think the unit three transmission  
3 was somewhere in the 80 percent range complete.  
4 So that could have been completed even with the  
5 plant construction still going on. And the staff  
6 size from the contractor would have obviously been  
7 diminished. So some of the carrying costs would  
8 have gone down. When the first unit comes on,  
9 those folks would transition from the capital work  
10 order to operation and maintenance costs. So, you  
11 know, extensively half of the staff -- half of the  
12 owner's cost, the carrying cost for the owner, the  
13 construction would have gone down just whenever  
14 the first unit came on.

15 So you say at what cost. The short answer is  
16 I don't know at what cost, but the bulk of the  
17 cost, the contract cost, would have been fixed.  
18 So, you know, what I premise this on was two  
19 things: That you still had the partner that was  
20 funding their 45 percent share and we still had  
21 the fixed-price contract.

22 Q If you have a fixed-price contract with a  
23 contractor who is woefully inadequate in the way  
24 they're keeping the production and efficiency,  
25 aren't you basically forcing them into bankruptcy?

1 A No, I don't think so.

2 Q That's what happened, isn't it?

3 A Well, certainly that's what happened, but just  
4 because it's what happened doesn't mean that the  
5 actions that the company took forced them into  
6 that bankruptcy, so, you know --

7 Q I didn't say the company took it. I said if you  
8 know at the time you're changing over to a  
9 fixed-price, you know up to that point you can't  
10 deal with this variable cost anymore. They were  
11 killing you, weren't they?

12 A The variable cost?

13 Q I mean the cost-plus. I mean, y'all were getting  
14 bills. You had to pay them --

15 A You're talking prior to the fixed-price?

16 Q Right. Even if you didn't agree with them, you  
17 had to pay it. Even if you disputed it, you had  
18 to pay it.

19 A Had to pay a portion of it.

20 Q You had to pay all of it, according to the  
21 contract, then you could go dispute it later.

22 A No. According to the contract, prior to the  
23 fixed-price option, prior to that amendment in  
24 October of 2015, if you disputed a cost, you'd pay  
25 90 percent of the disputed cost.

1 Q Okay.

2 A And withheld ten percent. The company also  
3 returned a number of invoices as deficient, which  
4 means that those costs were not paid. The company  
5 also challenged some progress payments, started  
6 with whole progress payments. And there were  
7 costs that Westinghouse tried to recover that the  
8 company took the position that they were not  
9 entitled to recover those costs. So there were  
10 mechanisms that the owners had to withhold  
11 payments. Certainly the company did those things,  
12 both owners did those things, withheld payments  
13 from the Consortium. Because at the time it was  
14 still the Consortium of Westinghouse and CB&I.

15 The fixing the cost was something that was  
16 important to the owners. While the owners were  
17 withholding some costs, it's not like the  
18 contractor had carte blanche and they could just  
19 charge a hundred of whatever they wanted to.  
20 While the owners were withholding costs --  
21 withholding payments, obviously the Consortium was  
22 threatening litigation, threatening to walk off  
23 the project. So they were threatening that if you  
24 don't pay, you know, we're not going to  
25 continue --

1 Q They were in litigation already, weren't they,  
2 down south?

3 A They were in litigation with the other project,  
4 with the Southern Company project. So the -- it  
5 isn't that the companies couldn't take some action  
6 to withhold money. The question is does the  
7 Consortium see that as legitimate or not? You  
8 know, obviously they didn't because they sent a  
9 number of project letters to the owner saying  
10 that, you know, you need to pay or else. So there  
11 were a variety of threats.

12 I'm trying to go back to your original  
13 question which was -- I'm trying to remember now  
14 what the original question was.

15  
16 MR. BALSER: If you don't remember, let  
17 Mr. Bell ask you again rather than just . . .

18  
19 A Go ahead. You said that we couldn't -- we had to  
20 pay a hundred percent of cost and that's not the  
21 case.

22 Q Actually, what I said, you had to pay it and then  
23 you said, "We ended up having pay 90 percent."

24 A Right. And you said, "You had to pay all of it,"  
25 and I said "No, we had to pay 90 percent."



1 Q Correct. So I stand corrected on that. But you  
2 had something called a Disputed Invoice Log or  
3 something. Maybe I've got it -- butchered the  
4 name, but what was it called?

5 A I don't remember --

6 Q It's a list of --

7 A I know what you're talking about. I don't  
8 remember what it was called either, but -- so we  
9 can call it Disputed Invoice Log, something along  
10 those lines.

11 Q But it's basically a way to chart or track the  
12 disputed invoices?

13 A (Nonverbal response.)

14 Q When did you first learn, Steve, that you may be  
15 getting invoices from Westinghouse for labor that  
16 wasn't there?

17 A Again, with any megaproject you're going to have  
18 issues with things like time keeping. Another  
19 reason why the owner started going to a  
20 fixed-price would be helpful because then you  
21 don't have to worry about how many Kubota vehicles  
22 that they have on-site. They don't have to worry  
23 about timecards and timekeeping, those kind of  
24 things. There were frequently invoices where the  
25 SCANA Audits Group would audit the invoices of the

1 contractor and find discrepancies. That's  
2 something that's not unusual.

3 Q But my question goes directly to an issue that I  
4 think you may know a little bit about. And that  
5 is it's been learned since then, since the  
6 project, that there may have been invoices to  
7 SCANA for craft employees that were not actually  
8 working on the site. When did you first hear  
9 about it or learn about it?

10 A I'm not aware of invoices where craft employee --  
11 where the company was invoiced for craft employees  
12 that were not actually working on the site.

13 Q Are you aware of other kind of employees other  
14 than craft employees?

15 A There were. There are home office charges from  
16 both consortium partners that's often times  
17 difficult to track how many hours somebody in the  
18 home office would be charging. I guess it would  
19 be a lot like, you know, trying to figure out how  
20 many hours your lawyer is charging. Difficult  
21 sometimes to say how often they're on the phone,  
22 right? So it's difficult with home office charges  
23 to figure that out. So there were challenges to  
24 those kinds of things. There were instances where  
25 the contractor was charging -- were attempting to

1 charge for work that the company felt was not in  
2 the target bucket of work. So the company thought  
3 was in the fixed or firm bucket of work. That was  
4 a disagreement.

5 Q When did you first learn that these kinds of  
6 things may be going on?

7 A I don't recall specific dates along those lines.

8 Q Can you give me a year?

9 A Yeah. I'd have to say probably in the 2014 or '15  
10 time frame.

11 Q During this contract period, Santee Cooper started  
12 becoming a little bit dissatisfied with the way  
13 things were going. Do you recall that?

14 A Yes.

15 Q And they expressed that to Mr. Marsh and to you  
16 and others in either memos or e-mails or letters.  
17 Do you remember that?

18 A Yes.

19 Q If you take a look at the correspondence that  
20 started in '13 and '14 all the way through the  
21 time -- up to the time they withdrew, it almost  
22 seems like it's the same complaint in each --  
23 again, almost the same, but similar issues that  
24 E&G responded, so we're going to work on that,  
25 we're going to get that fixed, but it never got

1 fixed. What happened?

2

3 MR. BALSER: Object to the form.

4

5 A The first thing I'd like to say that when you say  
6 "it never got fixed" I think you're talking about  
7 the issues raised by Santee Cooper?

8 Q Sure.

9 A Some of the issues raised by Santee Cooper were  
10 actually fixed. I want to be clear that Santee  
11 Cooper would complain to SCE&G because they were  
12 the -- we operated as the agent, so SCE&G was also  
13 dissatisfied with things like productivity of the  
14 contractor and let the contractor know. SCE&G was  
15 also dissatisfied with the way that the submodules  
16 were coming out of Lake Charles facility and let  
17 the contractor know. So it isn't that SCE&G was  
18 dissatisfied; it's that Santee Cooper was not  
19 actually handling construction themselves, so the  
20 only people they really had to complain to was  
21 SCE&G. So that wasn't necessarily a surprise to  
22 me.

23 Also, Santee Cooper has a different  
24 philosophy on construction than SCE&G has in  
25 general. Santee Cooper is accustomed to being

1       their own general contractor, whereas SCE&G tends  
2       to look to EPC-type contracts. So there's a  
3       difference between contracts. I'm guessing you're  
4       probably aware. But under EPC, Engineer, Procure  
5       and Construct, the counter party or the contractor  
6       is responsible for basically everything, say for  
7       perhaps some things like the permitting. And when  
8       they're finished with the project, they give you  
9       the keys. That's kind of the premise. That  
10      doesn't work that way in nuclear, but that's the  
11      premise. If you're your own general contractor  
12      then you would -- and Santee's got some experience  
13      with this with some of their coal and their  
14      natural gas plants -- you'd buy the components;  
15      you contract the engineering; you contract the  
16      construction; you're responsible for all of the  
17      facets of the plant. So there was a difference in  
18      philosophy on construction, which I think at times  
19      led to some frustration on the part of Santee.

20           Again, SCE&G had had some successes with  
21      construction under EPC. And actually, a lot of  
22      the EPC contracts that SCE&G entered into were  
23      with Fluor Corporation.

24    Q      So go back to my original question, which I'm not  
25      sure you answered.

1 A Okay. Go ahead.

2 Q If you look at the Santee -- the whole body of  
3 correspondence where there was a suggestion or a  
4 complaint or a whining of sorts that they were  
5 concerned about different things. Y'all would  
6 have meetings. You would -- you know what I'm  
7 talking about? The groups would have meetings?

8 A Right.

9 Q And at every one of those meetings the response  
10 was, "We're going to look into it. We're going to  
11 care of it or going to do what we can do." But,  
12 yet, almost the exact same problems continued and  
13 continued and continued. And I'm asking you not  
14 the philosophy behind it, but wasn't there a time  
15 that you or your group said we can't get  
16 Westinghouse to get this damn thing done. You see  
17 what I'm saying?

18

19 MR. BALSER: Object to the prefatory remarks.

20

21 Q And the reason I ask it is because you said a  
22 minute ago this project could have been completed.  
23 And I'm asking under what circumstances would this  
24 project had been completed? Would it have been  
25 completed under the way it was handled up til

1           then, or would it have been a new philosophy going  
2           forward?

3       A     Well, first off, the project could have been  
4           completed even under the way the project was  
5           going, but it would have likely involved higher  
6           cost. Again, why the fixed-price options are  
7           important and why the loss of the fixed-price  
8           option is important and a decision to cancel.  
9           But, secondly, there were always mitigation plans  
10          underway with the Consortium. And each time that  
11          the company would go to the Public Service  
12          Commission to request a new date or a new schedule  
13          for cost, the new either substantial completion  
14          date or guaranteed substantial completion date was  
15          advertised and with the understanding that there  
16          was mitigation that would need to take place to  
17          hit those dates. That mitigation was multifaceted  
18          on lots of things, and some of that mitigation was  
19          successful.

20       Q     But not a lot of it?

21       A     Much of the mitigation was successful. There were  
22           some aspects of the project where the mitigation  
23           was not successful.

24       Q     And those were the big money parts, weren't they?

25       A     It was not for lack of trying. The performance

1 factor that you pointed out was one area where  
2 the -- despite the best efforts of the contractor  
3 and the urgings of the owners, the performance  
4 factor did not improve. In fact, probably got  
5 worse. But one thing I think that's important to  
6 keep in mind with performance factor -- often  
7 times people call it PF -- is that you can be  
8 efficient -- inefficient and still get to the  
9 final product by applying more resources. So if  
10 the PF didn't get any better, I could apply more  
11 people to do the work and still get there on time.  
12 It's analogous to, you know, fuel efficiency on a  
13 car. If I'm going a hundred miles and I've got a  
14 car that gets 20 miles a gallon, and I know it's  
15 going to take me five gallons of gasoline. If for  
16 some reason that car gets less efficient, somebody  
17 let's out all the air out of the tire --

18 Q You add more gas?

19 A -- sparkplugs, you can still get there. You can  
20 still do the hundred miles, but you're going to  
21 have to use more gas.

22 Q So --

23 A It's a similar premise with construction  
24 resources. So if a PF -- you know, the contract  
25 will assume a certain PF, or performance factor,



1           on efficiency of the craft. And if the efficiency  
2           of the craft isn't there, you can still meet the  
3           date by putting on more craft and having more  
4           people do the same amount of work. But it means  
5           it's going to be less efficient.

6    Q     Steve, I want to make sure that you and I  
7           understand each other. If we go to trial in this  
8           case, will you promise me that you'll say that  
9           same thing you just said to a jury? In other  
10          words, to fix this problem we're going to add just  
11          more inefficient people and more cost without  
12          telling the public it's going to cost them a  
13          fortune. In essence, what you're saying is we  
14          couldn't fix it, so let's just throw more people  
15          at it, and because we have a fixed-price we're  
16          going to make the contractor go under. That's the  
17          result.

18

19                 MR. BALSER: Object to the form.

20

21    Q     Isn't it?

22    A     So you said would I -- if we go to trial, would I  
23           say the same thing that I said now?

24    Q     Yes, sir.

25    A     I'll say the same thing that I said now, which is

1 not anything near what you just repeated back to  
2 me.

3 Q Well, let me make sure I get it then. You're  
4 saying that because we had a PF factor that was  
5 very inefficient and it got worse --

6 A Uh-huh.

7 Q -- then the answer to that is either make  
8 everybody be more efficient, which y'all were  
9 unable to do, or just throw more inefficient  
10 people on the project to get it finished?

11 A I didn't say more inefficient people. I said put  
12 more people on the project.

13 Q Did y'all ever find any efficient people to throw  
14 at it?

15 A Certainly.

16 Q Well, where's the proof of that?

17 A Well, if you look at the folks from CB&I Services.

18 Q Okay. But I'm talking about when you're looking  
19 at a PF factor from two to almost up to five in  
20 some areas, those, virtually, never got fixed, did  
21 they?

22 A I don't know anything about a PF of five.

23 Q Four, then. Four something.

24 A I don't know about an overall PF of four.

25 Certainly the PF was not where the contractor

1           wanted it to be, where the contractor planned for  
2           it to be, or where the owners wanted it to be. So  
3           there's no dispute about that. But I think what  
4           sometimes people misunderstand is that the PF, or  
5           the performance factor, if it doesn't improve,  
6           then you'll never finish on time. That's not the  
7           case. That's the point that I was trying to get  
8           to is that you can add more resources to it in  
9           order to finish -- still finish on time.

10       Q     May I suggest an alternative in simple fashion?  
11           If you got ten inefficient people, why not add  
12           five efficient people and get rid of the other  
13           five that are least efficient? But y'all didn't  
14           do that, did you? You added ten more people but  
15           didn't get rid of the ten inefficient people.

16       A     Yeah. I would not agree with that premise.

17       Q     All right. Let's talk about that. When did y'all  
18           first address the PF factor and how did you  
19           address it? And let's talk about when the  
20           contractor replaced those men or women that were  
21           the inefficient ones.

22       A     So which question do you want me to answer first?

23       Q     Well, you had a good chance of answering the  
24           general question. Now let's get down to the  
25           specifics.

1 A So you said when did we first -- when did the  
2 company first --

3 Q Let me start over. All right. When did you --  
4 and I'm using "you" in the collective. When did  
5 you first learn that the PF factors were out of  
6 kilter?

7 A Again, don't recall exact dates. I would have to  
8 say it was probably in the 2014 time frame.

9 Q Okay. And did you have meetings concerning these  
10 problems?

11 A We certainly had meetings where the PF factor came  
12 up.

13 Q Okay. And were those meetings just with your  
14 group or with your group and the contractor or the  
15 Consortium?

16 A Both.

17 Q And what was the response from the contractor  
18 about the inefficiency or the high PF?

19 A It was -- it was not a single response. There  
20 were a variety of responses. One of the responses  
21 is, "We're going to do some things to try to  
22 improve the PF." A second response was, "There  
23 are reasons why the PF is not as good as we had  
24 hoped it would be." So there were different  
25 responses to it. And, you know, sometimes it was

1 blaming other things. But, you know, they also  
2 did commit to try to improve the PF.

3 Q Okay. But they committed to improve the PF on  
4 multiple occasions, didn't they?

5 A They did.

6 Q And are you aware of whether or not, overall, not  
7 in particular specific areas -- because there a  
8 couple of areas that the PF was pretty good,  
9 wasn't it?

10 A There were areas where it was good and there were  
11 time frames where it was good, yes.

12 Q So when they kept saying "we're going to improve,"  
13 that was a good response. But when they didn't  
14 improve and they told you again at another  
15 meeting, "We're going to improve." How often do  
16 they have to tell you that before you started  
17 understanding that either they're not going to  
18 improve or they're incapable of improving?

19 A So let me answer that two ways. One is I don't  
20 know exactly how many times you have to listen to  
21 somebody before you make a determination like  
22 that, but certainly at some point the company had  
23 concluded that an improvement of the PF was  
24 unlikely. And in testimony before the Public  
25 Service Commission, I said that the PF would not

1 improve to what the contractor wants it to. And  
2 that would involve more people to get to the same  
3 endpoint and would involve higher cost. So  
4 certainly there was a point where before the  
5 Public Service Commission in testimony I said  
6 that.

7 Q You know what year?

8 A I think it was '15 and '16.

9 Q All right. So --

10 A And there were certainly things that the  
11 Consortium, and then later Westinghouse and Fluor,  
12 tried to do in order to improve PF. So you  
13 pointed out a few minutes ago that there were  
14 areas where the PF was good. And in general, that  
15 was an area where a subcontractor would be  
16 responsible for the majority of the work. So not  
17 the megaproject contractor but something that they  
18 subbed out. So one of the things that the  
19 Consortium was doing and Fluor was on board with  
20 was subbing out more things to subcontractors.  
21 Because the PF was really only a measure of the  
22 direct craft.

23 Q Right.

24 A So if something was subbed out and went well, it  
25 didn't factor into -- there wasn't -- there was a

1 benefit to the project, but the PF number that the  
2 Consortium would report, or Westinghouse would  
3 report, would not get benefit of that, if you  
4 understand what I'm saying.

5 Q You mentioned that they would say things like  
6 we're going to improve and then they would give  
7 reasons why they were having these problems. Do  
8 you recall the reasons or some of them?

9 A Part 52 was often times blamed as a reason. There  
10 were changes in the design where blame was a  
11 reason, things coming from China. There were, you  
12 know, certainly things like weather. I discounted  
13 those kind of things. The procedural or training  
14 requirements. Nuclear has training requirements  
15 that go beyond general or typical construction.  
16 It will be unusual for craft on a normal  
17 construction project to get trained other than  
18 their upfront or initial training, whereas in a  
19 nuclear arena you get more training like quality  
20 assurance and quality-control, intrusiveness,  
21 those kind of things. So there were reasons, and  
22 a lot of it was that nuclear construction is more  
23 difficult than general construction and that  
24 design issues and the Part 52 impacts were more  
25 significant than they had anticipated.

1 Q Have you seen the documents that discuss -- this  
2 is, I think, an illustrative detail -- that  
3 discuss the issues of the craft men and women  
4 getting there at their start time but actually  
5 taking at least an hour to get to the job site?  
6 And then with the midday break or midmorning break  
7 and then lunch they're working not much but an  
8 hour, an hour-and-a-half for the whole morning.  
9 Did you see that?

10 A No.

11 Q Did you hear about that?

12 A Could you show it to me?

13 Q I can bring it up. I'm just trying --

14 A I don't have that document, so I don't know which  
15 document you're talking about. So for me to  
16 comment on it --

17 Q But in general, not necessarily the document. Did  
18 you hear about that being a problem?

19 A Did I hear about those types of efficiency issues  
20 being a problem?

21 Q Right.

22 A Not to the extent that you just discussed. I'm  
23 aware that the Consortium did and Westinghouse did  
24 commission a couple of efficiency studies. And  
25 those efficiency studies did identify some issues,



1           and the results of those issues, there were  
2           changes made to work practices, policies and  
3           procedures. An example of that is cell phone  
4           usage. So Fluor had determined that cell phone  
5           usage was a problem and basically outlawed the use  
6           of cell phones on the site. They put on dedicated  
7           walk paths so that people couldn't get lost, if  
8           you will, going from one place to another. They  
9           laid on extra bus transportation to take --  
10          relatively large construction site. Parking is  
11          far afield from where the craft would actually  
12          work. So, you know, controlling that many craft  
13          going from a parking lot a long way away to the  
14          job site, you know, they are inefficiencies. But  
15          I think Fluor was working on those inefficiencies.

16   Q       I'll try to find that document over the break --

17   A       Okay.

18   Q       -- and let you look at it. So that would hurt the  
19          PF factor if you worked an hour-and-a-half in a  
20          four-hour morning. That's not a good PF.

21   A       Certainly if you worked an hour-and-a-half in a  
22          four-hour morning, it would hurt the PF.

23   Q       If you only worked two hours in a four-hour  
24          morning, that wouldn't be good, would it?

25   A       That's correct.

1 Q So going back to this comment that if those -- if  
2 the bankruptcy hadn't occurred and Santee hadn't  
3 have pulled out that you think that the  
4 fixed-price would have been your best bet.

5 A What I said was the fixed-price option, had it  
6 been maintained and the fixed-price contract been  
7 maintained and our partner would have stayed in, I  
8 believe that we would both have still been  
9 building the plants.

10 Q And, again, we'll go through some details in a  
11 little bit. But prior to the fixed-price option,  
12 do you know approximately what the group was  
13 paying each month on average?

14 A Prior to the fixed-price option what we -- what  
15 the owners were paying --

16 Q Right.

17 A -- on a monthly basis? The short answer is it  
18 varied. It varied. It could vary quite a bit  
19 with milestone achievement. But it could be, you  
20 know, \$50 million to \$100 million plus.

21 Q Okay. So -- and that was the total payout with  
22 both partners?

23 A Yeah. A hundred percent number, yes.

24 Q And so the fixed-price, y'all were paying 100  
25 million a month?

1 A That's correct. Well, after the negotiation of  
2 the fixed-price option --

3 Q Right.

4 A Starting, I think, in January of the following  
5 year, the owners had agreed to pay Westinghouse a  
6 fee of \$100 million a month for a five or  
7 six-month period while the negotiations were  
8 ongoing for a construction milestone payment  
9 schedule.

10 Q Would there be a ready reference document or  
11 something that if you and I wanted to talk about  
12 that we could look at the monthly payment and kind  
13 of chart it out what you were paying before the  
14 100 million a month?

15 A I think the financial services group at SCANA  
16 would have that. I don't have that number. I  
17 don't have those documents.

18 Q I'll try to find over the break a document or two,  
19 if we have it, to talk about the prior payments.

20 A Okay.

21 Q My impression was -- and I may be wrong, so I may  
22 be off. But my impression was is that when you  
23 went to the fixed-price, there was a fairly  
24 dramatic increase on a monthly basis of what the  
25 payment was?

1 A There was certainly an increase. I don't know  
2 that it was dramatic over some months.

3 Q But over --

4 A In months where they would have --

5 Q -- but the average is what I'm talking about.

6 A There was certainly an increase over the average.  
7 And that increase was premised on the fact that  
8 Fluor was coming in as the new constructor.  
9 Westinghouse was taking over, CB&I had exited the  
10 project, you know, starting January 1. And that  
11 there was a recognition on the part of  
12 Westinghouse that there were -- in order to fund  
13 the mitigation activities, which included more  
14 craft that Westinghouse would have to ramp up in  
15 order to get to -- to get to those mitigations  
16 such that the status quo payments would have  
17 resulted in a status quo increases in efficiency  
18 or getting more work done and mitigation factors.  
19 So what Westinghouse asked for was to staff up.  
20 And in order to staff up they needed a little bit  
21 more money. And Westinghouse was also paying for  
22 things that the company wouldn't necessarily be  
23 invoiced for. And so to compensate them for those  
24 kind of things, they asked for more than 100  
25 million. They wanted a 130 million, I think, or

1           140 million. So they wanted significantly more.  
2           So it was a negotiated number down from their  
3           number up from what the company had been paying to  
4           allow them to cover some of the cost they were not  
5           entitled to bill a company for and to compensate  
6           them for the fact that they were going to ramp up  
7           with the proviso for a true-up at the end.

8    Q       So that increased the owner's cost?

9    A       That increased the owners' cost? That did not  
10           increase the owners' cost.

11   Q       The 100 million a month?

12   A       That was not owners' cost. That was cost --

13   Q       Excuse me. Increase the cost of the project?

14   A       It did not increase the cost of the project. It  
15           was a timing issue.

16   Q       Well, let me put it this way: It increased the  
17           cost of the project over a period -- over that  
18           time frame?

19   A       It set the cost payments to Westinghouse in lieu  
20           of the construction milestone payment schedule  
21           while that was being negotiated in anticipation of  
22           ramping up the construction that Fluor would have  
23           to hire a lot more people in order to get the job  
24           done. The same thing we talked about a few  
25           moments ago. So it was in anticipation of all

1       those things for a finite period of time with a  
2       true-up at the end.

3       Q     Steve, I just -- I'm trying to figure this out.  
4       And I know you've been through it and you're  
5       probably are sick of thinking about it. But how  
6       in the world would E&G and SCANA add more people  
7       to an inefficient project instead of replacing  
8       inefficiencies with better people and thus saving  
9       money? We're talking about millions and millions  
10      of dollars when you ramp up like you're talking  
11      about.

12     A     Well, once you go to the fixed-price contract,  
13      then the inefficiencies don't cost the owners more  
14      money. So the contractor is not going to get more  
15      money from you for those inefficiencies, which was  
16      a concern the owners had which is why the owners  
17      pushed so hard for the fixed-price contract.

18     Q     I get all that. I understand that.

19     A     So your premise is that if you just get rid of a  
20      few people and -- a few inefficient people then  
21      the project becomes more efficient. And the  
22      problem with that notion is that it isn't  
23      necessarily the craft themselves that were being  
24      inefficient. So what the owner said is that it's  
25      -- that's a leadership issue with the Consortium

1 before the October agreement and with Westinghouse  
2 and Fluor after that agreement, that the  
3 leadership needs to take care of those kinds of  
4 issues: leadership with the Consortium, leadership  
5 with Fluor, leadership with Westinghouse.

6 And the contractor did go through a couple of  
7 reductions in force, and those reductions in  
8 force, they would call the least efficient people  
9 from the workforce. So there were two or three --  
10 at least two or three times when the contractor  
11 would actually call the workforce to do just what  
12 you're suggesting, which is get rid of inefficient  
13 people. I mean, the same time they have to ramp  
14 up hiring.

15 Q How many people did they get rid of at this time?

16 A It was different each time. I can remember at one  
17 point being about a 150 people. But the numbers  
18 were different each time. I don't recall exactly  
19 what they were on each date.

20 Q So you're saying that some of the reason for the  
21 inefficiency or the higher PF may have to do with  
22 leadership of the contractor?

23 A Well, I want to say it's a number of things. It  
24 could be design related issues, procurement  
25 related issues, procedure issues. Could be

1 weather, although I didn't put too much stock in  
2 the weather. There were a lot of things that  
3 means that a nuclear workforce in general is less  
4 efficient than a nonnuclear workforce, okay.  
5 Procedural requirements, quality assurance,  
6 quality control, NRC oversight, inspections, there  
7 are a lot of reasons for some of those  
8 inefficiencies. So it's -- I don't think you can  
9 just say we had a number of bad actors in the  
10 craft and that was the reason they were  
11 inefficient. Certainly, there were inefficiencies  
12 there. And so one of the things the contractor  
13 did was they culled some of their workforce at  
14 periodic times through the project, starting with  
15 CB&I and ending with Fluor. Shaw may have  
16 actually done some of that as well. You know,  
17 once Shaw was there, the total craft population  
18 wasn't that large, so they may not have done one.  
19 But the contractor also commissioned these  
20 efficiency studies and did change things on the  
21 project to improve efficiency.

22 Q During these times '14, '15, '16 there are  
23 comments in y'all's notes and e-mails and  
24 different things we have seen that y'all worried  
25 about Westinghouse going bankrupt. What did



1           that --

2

3                   MR. BALSER: Object to the form.

4

5   Q     What did that -- how did that play into your  
6           thinking about what to do about the project and  
7           how to manage it?

8   A     Well, the bankruptcy discussion started off as  
9           contingency planning. So, you know, the  
10          companies, the owners did a lot of contingency  
11          plans, so I didn't think it was necessarily  
12          untoward to plan for a contingency.

13   Q     Right.

14   A     So it didn't strike me as unusual that we would be  
15          doing that. The actual retention of any kind of  
16          bankruptcy expert in planning was really with the  
17          legal departments of SCANA and Santee Cooper, so I  
18          was not involved with that.

19   Q     I mean, I think having a contingency plan is a  
20          good one. But the fact that you were thinking  
21          that this might happen must have come about as a  
22          result of your thinking that the contractors, they  
23          can't get their act together and, therefore,  
24          they're -- they keep telling us they want to bill  
25          us more and we have these fights. And we see

1       these documents where y'all are battling back and  
2       forth. But, all said and done over the period of  
3       time that this contract occurred, it cost a lot  
4       more than would you anticipated, didn't it?

5   A    When you look on a total cost perspective --

6   Q    Let me ask you just to answer that first because  
7       sometimes I forget my question by the time you  
8       want to talk about it. So it cost a lot more,  
9       didn't it?

10  A    It cost more, certainly.

11  Q    You don't use the term "a lot"?

12  A    Well, it depends on -- well, you may have one  
13       thing in mind when you say "a lot." I may have a  
14       different thing when I say "a lot." So I was just  
15       going to explain my answer. Certainly it cost  
16       more. There's no question that it cost more.

17  Q    More than what was predicted?

18  A    More than what was predicted.

19  Q    All right. And more than what the public was told  
20       at the beginning that they would have -- in other  
21       words, the public, they rate holders are going to  
22       foot a lot of this bill eventually, weren't they?

23  A    The ratepayers.

24  Q    The ratepayers.

25  A    Yeah, the ratepayers were going to foot a lot of

1 the bill, which is the way the rate design is in  
2 the utility business, yes.

3 Q Well, of course, the rate design in the utility  
4 business went upside down when the BLRA came  
5 about, didn't it? This brand new rate paying  
6 system.

7

8 MR. BALSER: Object to the form.

9

10 Q For construction purposes, right?

11

12 MR. BALSER: -- upside down.

13

14 Q Upside down is pretty good. Let me just do it  
15 another way. It went 180 degrees, didn't it?

16

17 MR. BALSER: Object to the form.

18

19 A Yeah. I don't think that it went 180 degrees; I  
20 don't think it was upside down. But it certainly  
21 changed. It changed the way that the projects,  
22 whether they be nuclear or coal, could be  
23 constructed in South Carolina.

24 Q It certainly benefited SCANA and E&G tremendously,  
25 didn't it?

1 A I think there was a tremendous benefit to the  
2 ratepayers also, in as much as the financing cost  
3 savings on this project were going to be  
4 significant. So it was a billion dollars over the  
5 construction project, and I think it was 4 billion  
6 over the lifetime of the plant because the  
7 financing charges were being paid as the project  
8 was being constructed as it was it going along.  
9 So the Baseload Review Act was a benefit to the  
10 ratepayers. A large, a capital intensive project  
11 would likely not be possible without some form of  
12 legislation like the Baseload Review Act for  
13 utilities of the size of Santee Cooper and SCANA.

14 Q Do you remember the first couple of questions I  
15 asked you at the beginning is how do we get here?  
16 Do you remember?

17 A Uh-huh.

18 Q Would it be fair to say that you believe -- or  
19 maybe I'll ask it this way: Would be fair to say  
20 that if the project had gone along as planned then  
21 the BLRA would have been a benefit to the  
22 ratepayers and to SCANA, wouldn't it?

23 A It certainly would have been a benefit to both.

24 Q Right. Now, the group that really, up to now, has  
25 not had to take it on the chin are the investors.

1           Isn't that true?

2

3           MR. BALSER: Object to the form. Can you  
4           read back that question? I'm sorry, I just didn't  
5           hear it.

6           MR. BELL: I'll just restate it.

7           MR. BALSER: Okay.

8

9   Q       The ratepayers that I represent, the company that  
10          you work for, your company hugely benefited in  
11          profits over this construction period, didn't it?

12   A       Usually benefited in profits? I think that the  
13          return on equity was spelled out in the BLRA.

14   Q       Please answer my question first. And I understand  
15          you want to explain it, but let me rephrase it so  
16          it will be an easier question. During the  
17          construction project, SCANA and SCE&G increased  
18          the capitalization, increased their market  
19          share -- not the market share -- increased their  
20          stock price and the investors made a really good  
21          return on their money, didn't they?

22   A       I think the investors made a reasonable return on  
23          the money, which was consistent with what the  
24          returns prior to the nuclear project. But again,  
25          I'm not a financial expert.

1 Q All right. But they didn't suffer because of the  
2 construction problems, did they?

3 A No. I think the company suffered through a number  
4 of downgrades by rating agencies and downgrades in  
5 stock ratings and performance measures. The stock  
6 price certainly did increase. That's a function  
7 of what the market will bear or what the market  
8 sees. So, again, not a financial expert.

9 Q But you were on some of those calls, weren't you?

10 A Certainly.

11 Q And you told the investors that we had these  
12 little issues but we think they're going to work  
13 out, didn't you?

14 A I informed the investors of the status of the  
15 project. And when asked questions about issues, I  
16 shared those issues.

17 Q Right. But you didn't share a lot of issues, did  
18 you?

19 A I think I did share a good many issues.

20 Q But there were a lot of problems in this  
21 construction project that at the PSC level and at  
22 the investor level were not told to the PSC or the  
23 investors. Would you agree with that?

24 A No, I wouldn't agree.

25 Q Okay. So your testimony is that you fully

1 informed the PSC of the problems associated with  
2 the construction, and you fully informed the  
3 investors on your investor calls with these  
4 problems sufficient enough to let them make a wise  
5 investment?

6 A So my testimony is that while perhaps not every  
7 single issue was discussed in detail, the topics  
8 that were problems for the construction and the  
9 progress of construction were disclosed to the  
10 Public Service Commission and to the investors.

11 Q Now, let's pretend like -- do you have stock in  
12 SCANA?

13 A I do.

14 Q You have a lot of stock, don't you?

15 A I have a fair amount of stock.

16 Q And you got most of your stock during the  
17 construction period, didn't you?

18 A I worked for the company for 22 years and have  
19 been pretty much buying the same percentage in the  
20 401(k) program the whole time.

21 Q A percentage, but you got bonuses with stock?

22 A Got bonuses with stock?

23 Q I got some --

24 A -- in terms of stock?

25 Q Yes, sir.

1 A Not during the construction progress, no.

2 Q Okay. So when we see that the company has  
3 furnished us some financial information and see  
4 that you were making a salary four to five, 600 in  
5 that area during this period. You have stock  
6 options of something during that period of  
7 millions of dollars. Tell me how that works.

8 A No stock options.

9 Q Okay. And you got the stock?

10 A No. The company paid out two forms of bonus. One  
11 was a short-term bonus which was annual and  
12 another one was a long-term incentive payout which  
13 is over a three-year period.

14 Q Was it all cash?

15 A All cash.

16 Q Okay. So when we see something that -- how much  
17 you made during this period, we can assume that's  
18 all cash?

19 A With the exception of the things that were  
20 benefits to --

21 Q Sure.

22 A -- home security and those kind of things.

23 Q I get that.

24 A And then there would be a company match in the  
25 401(k) because, as I said, I had been



1 participating at the same level of the 401(k) ever  
2 since I started with the company.

3 Q But would you -- and again, I'm just doing the  
4 30,000-foot level. Wouldn't you agree that  
5 without the construction project you would not  
6 have gotten the large payout you got during that  
7 five or six years?

8 A No, I would not agree with that.

9 Q Okay. But you would have gotten it anyway?

10 A The structure of the bonus plans or the  
11 compensation plans has -- is unchanged. So I  
12 believe that I would have gotten at or near those  
13 same levels.

14 Q But as your cost increased for the project so did  
15 your income, didn't it?

16 A As the cost increase so did my income?

17 Q So did the company's income?

18 A The company's income? So the net income for the  
19 company may have.

20 Q I mean, they got a return on their cost?

21 A They got a return on -- they got a return on  
22 equity, yes.

23 Q So the more the capital expenditure was the more  
24 they made?

25 A Well, the capital expenditure -- again, I'm not an

1 expert in rate design; I'm not a financial expert.  
2 The BLRA was a recovering on the cost of  
3 financing.

4 Q Let me ask you this: If you were to show an  
5 investor the letters that Lonnie Carter wrote and  
6 the e-mails he wrote talking about the problems,  
7 do you think an investor would say "I was told  
8 that. I got that understanding from Mr. Byrne  
9 when he told us at our investor meetings. I got  
10 the same understanding from him that I'm reading  
11 in Lonnie Carter's letters." Do you think that  
12 they would say that they did or didn't get the  
13 same impression from the -- from your investor  
14 calls?

15  
16 MR. BALSER: Objection. Calls for  
17 speculation.

18  
19 A I don't know what an investor would say.

20 Q Pardon me?

21 A I don't know what an investor would say.

22 Q Well, okay. You would agree, wouldn't you, that  
23 someone looking at Lonnie Carter's or the Santee's  
24 complaints and those letters and things are  
25 certainly different than what was told to the PSC

1 and to the investor calls, wouldn't you?

2 A You know, I don't know that I would agree with  
3 that statement. I think that Mr. Carter may have  
4 been more vociferous. I think Mr. Carter at times  
5 would be positive and at times be negative. I  
6 think sometimes he was grandstanding. I think  
7 often times he was taking a negotiating posture.

8 Q Negotiating for what?

9 A Well, negotiating, one, with the Consortium. And  
10 some of the e-mails I'm guessing that you're  
11 talking about would be in his interactions with  
12 consortium members and sometimes even with SCE&G  
13 members. So, you know, Mr. Carter would often  
14 time say things that were a little peculiar to me.

15 Q So let me ask it a different way. We'll come to  
16 this and we'll go over those in a little bit. I  
17 recognize there's some disagreement with counsel  
18 over the Bechtel report. You've heard that,  
19 haven't you?

20 A Disagreement with counsel?

21 Q Whether it's confidential or not?

22 A When you say "disagreement with counsel" are you  
23 talking about --

24 Q Your guys think it's confidential; we think we've  
25 got it and it's okay. All right. So let me just

1 ask you this question: Did you read the newspaper  
2 article where they published the Bechtel report?

3 A I did not.

4 Q Okay. So have you read the Bechtel report?

5 A I have.

6 Q Okay. If an investor had the Bechtel report in  
7 front of him or her, and then heard your PSC  
8 testimony or the investor calls or even some of  
9 your press days, would they get the same  
10 impression from what Mr. Carter said and what  
11 Bechtel said and what you told him?

12 A I'm not going -- I don't want to speculate on what  
13 an investor might read from either the Bechtel  
14 report or Mr. Carter's comments. So I don't know.

15 Q But I understand your answer. But you know the  
16 reason for having an investor call is to give that  
17 investor an open and fair rendition of what's  
18 happening so they can make a wise decision as to  
19 whether to invest or not, don't you?

20 A That certainly could be one of the purposes of the  
21 call.

22 Q So from your standpoint, do you think that what is  
23 found in the Bechtel report, what is found in  
24 Lonnie Carter's letters, those e-mails, gives the  
25 same impression of what you gave in the PSC's

1 testimony and the investor calls and the press  
2 days that you had? Don't you see a dichotomy  
3 there?

4 A I think that we were fair and balanced in what was  
5 said in media days and press releases and  
6 testimony and BLRA public reports. I think that  
7 Mr. Carter would, again, sometimes adopt  
8 negotiating postures which are not necessarily  
9 what you would view the same way as if you were  
10 giving a report to somebody that was looking at  
11 the project.

12 Q Okay.

13

14 MR. BALSER: Ed, when you get to a convenient  
15 stopping point, why don't we take a short break?

16 MR. BELL: Let's take a break. Off the  
17 record.

18 VIDEOGRAPHER: This concludes volume one of  
19 the video deposition of Stephen Byrne. The time  
20 is now 10:48 a.m. We are now off the record.

21

22 (Off The Record)

23

24 VIDEOGRAPHER: We are now back on the record.  
25 Today's date is August 14, 2018. The time is

1 approximately 11:25 a.m. This is video number two  
2 of the video deposition of Stephen Byrne.

3

4 MR. BELL: For the record, we are identifying  
5 Exhibit No. 1 as the August 23, 2013, letter from  
6 Lonnie Carter to Kevin Marsh. We'll pull it up on  
7 the screen.

8

9 (Whereupon, Contract Negotiations Letter  
10 was marked Exhibit No. 1 for  
11 identification.)

12

13 MR. ELLERBE: Is there a Bates number?

14 MR. BELL: There is. It's ORS00 073599.

15

16 BY MR. BELL (Continuing):

17 Q When you've had a chance, let me know, Steve, when  
18 you've finished reading.

19 A Okay, I've read it.

20 Q Was this one of several communications that  
21 Mr. Carter had with Mr. Marsh, that you were aware  
22 of?

23 A Mr. Carter certainly had many communications with  
24 Mr. Marsh. This is certainly one of those, yes.

25 Q Okay. I'm not going to hold you to it, but do you

1           remember when Mr. Carter started becoming more --  
2           I don't know what the right term would be -- more  
3           assertive in his complaints about the project?  
4           Like the year or what time frame?

5    A       I don't. I think Mr. Carter was concerned with  
6           the performance of the contractor for the majority  
7           of the project.

8    Q       Okay. So this letter starts out with a complaint  
9           or a concern Mr. Carter has in the first paragraph  
10          concerning the Lake Charles facility about the  
11          submodules. Is that correct?

12   A       Yes.

13   Q       Okay. And then he references in April 9 meeting  
14          with the CB&I leadership, review the issues. CB&I  
15          committed -- according to this letter -- it says  
16          "CB&I committed to deliver 83 modules by the end  
17          of 2013." According to the letter, they provided  
18          a delivery schedule. And then in that letter it  
19          reduced it from 83 to 69. Do you see that?  
20          Second paragraph.

21   A       Yes.

22   Q       Do you know why CB&I changed their commitment from  
23          83 to 69?

24   A       I don't remember.

25   Q       Okay. Did CB&I, the best you can recall, deliver

1           69 modules, as stated in this letter, by the end  
2           of 2013?

3    A     I don't recall.

4    Q     From your best memory, though, they most likely  
5           didn't from the problems you were having?

6    A     I don't recall.

7    Q     Do you know how many modules and submodules were  
8           part of the contract with Lake Charles?

9    A     No. It was a significant number. This was not  
10          talking, I don't believe, about one specific  
11          module for which they were making submodules. So  
12          this was obviously talking about more than one  
13          module for which they were making submodules. But  
14          the total number that were originally premised to  
15          come out of Lake Charles, I don't remember what  
16          that total number is.

17   Q     Okay. So the third paragraph talks about the nine  
18          to 12 month delay due -- and that by 2013,  
19          August that there was a nine to 12 month delay.  
20          There was financial community was notified on the  
21          June 5th presentation. Were you present on that?

22   A     I was.

23   Q     Okay. At that time, did the owners indicate the  
24          additional cost or the amount of the additional  
25          cost this nine to 12 month anticipated delay would



1 incur?

2 A I don't remember what was disclosed at that time  
3 relative to cost.

4 Q It later turned out that the nine to 12 months  
5 turned out to be longer, didn't it?

6 A Yeah, I don't know if it was for this reason.  
7 Certainly it turned out to be longer than the nine  
8 to 12 months that was announced at this  
9 analyst meeting.

10 Q And when was that announced? That the nine to 12  
11 months at the June 5th analyst meeting, when did  
12 the owners correct that or make an announcement  
13 that y'all's estimate turned out not to be  
14 fulfilled, I guess?

15 A Well, first of all, the nine to 12 months came  
16 from the Consortium. At this point in time  
17 Chicago Bridge & Iron had just taken over the  
18 facility in Lake Charles from Shaw. So it  
19 transitioned from Shaw Module Solutions to CB&I  
20 Lake Charles. CB&I had done a review of their  
21 module status, which is what Mr. Carter references  
22 here, where they committed to deliver a certain  
23 number of modules. That was announced in the  
24 analyst day presentation in New York on June 5th,  
25 as it says here. Subsequent to this, there was

1 another estimate to complete done by the  
2 Consortium. And it was either later this same  
3 year in 2013 or in 2014 where the Consortium was  
4 proposing some new dates. That was the time frame  
5 where SCE&G made those announcements.

6 Q The module construction, was that delayed because  
7 of design issues or because of Lake Charles having  
8 problems with their own ability to construct, if  
9 you recall?

10 A Oh, I recall.

11 Q Okay.

12 A The Lake Charles facility had a number of issues.  
13 Certainly design issues played into it. And if  
14 you were to ask Shaw and CB&I, they would point to  
15 design issues. If you would Westinghouse, they  
16 would point to fabrication issues and issues of  
17 qualifications and record keeping and all kinds of  
18 other things with the workforce down at the Lake  
19 Charles facility itself. So I would say the Lake  
20 Charles facility had a number of issues.

21 Q Did the owners have an agent representative or  
22 someone at the Lake Charles facility to oversee  
23 what was going on?

24 A The owners did place somebody at the Lake Charles  
25 facility. Not originally, but as some of these

1 problems started to unfold, the entity  
2 construction team wanted some first-hand feedback  
3 on that Lake Charles facility. So they did place  
4 one inspector at the facility.

5 Q Do you recall who that was?

6 A I don't recall the name.

7 Q Did that turn out to be an employee or a contract  
8 worker?

9 A I believe that was a contract person.

10 Q Who would know or who would I -- if you were  
11 asking to find that name, how would you go about  
12 doing that?

13 A The best person in the position to answer that  
14 question likely would be Alan Torres who was the  
15 general manager for construction.

16 Q With Westinghouse?

17 A No, with SCE&G.

18 Q Okay. You don't recall -- was it a man or woman?

19 A I don't recall.

20 Q Okay. Did you get reports from this individual?

21 A I did not get reports from that individual.

22 Q Did you eventually see reports that were shown to  
23 you or e-mailed to you?

24 A I don't recall seeing reports from this  
25 individual. Those reports would have gone to the

1 construction team. Again, Mr. Torres would have  
2 been one seeing those reports.

3 Q I'm trying to figure out how we could do some  
4 research to figure out the person's name and get  
5 their e-mail or something. So would you think  
6 that I would be successful if I ask for  
7 Mr. Torres' e-mails from someone that was working  
8 up at Lake Charles on SCANA's behalf? You think  
9 someone would be able to find those, if I ask?

10 A You're talking about somebody at SCE&G?

11 Q Yes.

12 A I really don't know if they would be successful or  
13 not.

14 Q Okay. I understand that, but --

15 A Well, I know Mr. Torres no longer works for SCE&G.

16 Q Right.

17 A To what extent his e-mails have been captured, I  
18 don't know.

19 Q But he certainly communicated back-and-forth?

20 A I would imagine he communicated back-and-forth.  
21 But again, that was communications between  
22 Mr. Torres and the inspector at Lake Charles. I  
23 did not see those.

24 Q How long did that individual work for E&G?

25 A I don't know, but it was one individual the whole

1 time. There were perhaps some change --

2 individuals. But SCE&G had a person at the

3 facility for a number of years, basically until

4 that facility stopped producing submodules.

5 Q Would that have been a company that furnished the  
6 individual or do you recall?

7 A Would it have been a company? Did the individual  
8 work for a company?

9 Q That was hired by E&G?

10 A I don't recall.

11 Q Okay.

12 A It may well be. I just don't recall.

13 Q All right. But in any event, you expect that that  
14 particular individual or his company would have  
15 probably communicated back with -- back-and-forth  
16 with Alan Torres and y'all got information from  
17 him?

18 A I would imagine that that individual communicated  
19 with Mr. Torres. Now, if Mr. Torres had somebody  
20 that was intermediary between him and this person,  
21 I couldn't answer that question.

22 Q Do you recall whether in some of your weekly and  
23 monthly reports that some of that information  
24 would have been passed on to you?

25 A Information about module fabrication was in -- was

1 contained in the weekly and monthly reports.

2 Q Okay. I'm not familiar with this kind of  
3 fabricating company or business. Were they the  
4 only ones in America that were capable of  
5 fabricating these modules?

6 A No. To try to understand the Lake Charles issue,  
7 you have to understand at the time the nuclear  
8 renaissance was supposedly emerging in the US, and  
9 indeed around the world, US companies were looking  
10 at building plants. So I know at one point in  
11 time there were 18 license applications with the  
12 Regulatory Commission. So Summer would have been  
13 one of those. The two plants in Summer would have  
14 been one application. The two plants in Vogle  
15 would have been one application. So there were 18  
16 on file with the Regulatory Commission at one  
17 point in time. Each of those were looking at a  
18 technology or they would try to be technology  
19 agnostic. But each one of the ones that was  
20 looking at a specific technology would get that  
21 reactor supplier. In our case that Westinghouse  
22 but there were others. But each was paired with a  
23 constructor. Westinghouse was paired with Shaw  
24 Group. Shaw Group, I believe, was a 20 percent  
25 owner of Westinghouse at that point in time. And

1 the Shaw Group was -- built this facility  
2 specifically to make modules for the AP1000  
3 reactor. So this facility did not exist in 2008.

4 Q Kind of built into the project?

5 A It was built specifically to make modules for this  
6 project. A similar strategy was employed in  
7 China. So the Chinese -- I don't know which  
8 manufacturer it was -- but the Chinese built a  
9 module facility just to make modules for their  
10 AP1000 buildings. So this was a similar model to  
11 what the Chinese were using.

12 Q Describe, if you can in layman's terms, what are  
13 we talking about when we talk about a module or a  
14 submodule?

15 A Yeah. So the modules that we're talking about  
16 here are called structural modules. They have a  
17 designation CA01 through CA05 and then CA20, so  
18 there really were six. So Westinghouse often  
19 called them the big six modules. These varied in  
20 size, something the size of this room to something  
21 the size of a five-story building. I think the  
22 largest of the modules was about 80 feet wide by  
23 80 feet tall by 50 feet wide and was -- each of  
24 these was too large to be shipped by rail or  
25 truck. So they were designed as submodules, and

1 each of the submodules could be delivered by  
2 truck. So each of these submodules, some of them  
3 were, you know, 70 feet long, but nevertheless,  
4 could be trucked to the site.

5 The first of the big modules was a module  
6 called CA20 and it was about 70x70x45. So, you  
7 know, five-floor building kind of size. It  
8 contained 72 different submodules. So each of the  
9 72 submodules would be fabricated at the Lake  
10 Charles facility. And a submodule would be  
11 something probably about the size of this table  
12 but 70 feet long sometimes. And that would be  
13 trucked to the site. It would go into a module  
14 assembly building once it reached the site. And  
15 then each of these submodules would be welded  
16 together to form a big structural module, a very  
17 large module.

18 Q Were the modules steel?

19 A Modules were different materials. Certainly  
20 steel. But some of them were alloys of steel;  
21 some of them would be stainless; some of them  
22 could be carbon steel. So they were different.  
23 Even within a single module, you might have  
24 different grades of steel.

25 Q So the idea was you make the modules there, you'd



1           save money. Wouldn't have so much on-site work,  
2           things like that?

3       A     The premise of the modular construction was  
4           similar to putting together a nuclear submarine or  
5           aircraft carrier. And as much as there is  
6           generally a higher degree of quality in a shop  
7           environment than if you're in the field. So the  
8           more you can build in a shop environment, the less  
9           you build in the field, generally the better.

10      Q     Do you remember or recall what the six -- the big  
11           six were?

12      A     The first to be installed of the big six was a  
13           module called CA20 which comprised a large portion  
14           of the auxillary building. The next five -- so  
15           that went outside of the containment vessel. So  
16           you have a containment vessel which is a big steel  
17           cylinder. So five of the six steel structural  
18           modules went inside of this big steel cylinder.  
19           Outside adjacent to that big steel cylinder was a  
20           large square that comprised the auxillary  
21           building, that was CA20.

22      Q     The auxiliary building did what?

23      A     It contained what the nuclear industry would call  
24           the auxillary equipment. So safety-related pumps  
25           and heat exchangers and valves -- fuel cooler

1 would go into just kind of fuel storage pool.

2 Q So you had the auxillary building and then the  
3 other five were in containment?

4 A Inside the containment building.

5 Q And how many of those of the six got built in  
6 total?

7 A For unit two, all six got built and all six were  
8 installed. For unit three, all were built. I  
9 think four of the six were installed.

10 Q To they're still there now?

11 A Still there.

12 Q If you went out and looked at them, would you  
13 understand them a little bit more? I'm trying to  
14 get an idea in my mind.

15 A If I went out and looked --

16 Q If I were to go out there --

17 A Oh, you. Would you understand them a little bit  
18 more? You'd have a good understanding of the size  
19 and the complexity. I don't think it would be  
20 obvious, based on looking at them, what their  
21 function was.

22 Q Did y'all have some kind of layman's brochure that  
23 tells the story about what those modules do?

24 A Those certainly exist at both SCE&G and at  
25 Westinghouse. I don't know that I have them, but

1           they exist.

2       Q     All right. So if I were to get some kind of  
3           materials like that it might give a good  
4           description with maybe some pretty color  
5           photographs. Stuff like that?

6       A     Yes, it would.

7       Q     So let me ask you this --

8       A     I'm not sure they would be pretty.

9       Q     There were problems, if I understand you  
10           correctly, with the module construction issues,  
11           timing, things like that. Plans, I guess, were  
12           problems. Is that -- part of the plans were not  
13           completed, the module plans? Or did they all have  
14           them completed?

15      A     I'm not sure what state of completion the module  
16           design was in at the time Shaw went to  
17           construction, but certainly there were changes to  
18           the design after the start of construction.

19      Q     Of the percentage of the overall cost increase of  
20           this project, ballpark, although I know you took  
21           approximately, what kind of percentage are we  
22           talking about with the delay in the module  
23           delivery to the site -- not withstanding why  
24           they didn't get built, but delivery -- what affect  
25           did that have and what part did that play in the

1 overall cost increase?

2 A So the module -- you're asking what the module  
3 delay impacts on cost were to the project?

4 Q Yes.

5 A Yeah. I'm not sure I'm in the position to  
6 quantify that as we sit here today. Even giving  
7 you a ballpark, I'm not sure I would be really  
8 accurate. The actual cost of the modules  
9 themselves were fixed. So -- and commodities were  
10 fixed. The implications on the site were storage  
11 and the delay which would increase the target  
12 bucket. So it would be -- it's not direct from  
13 the modules themselves, but indirect from the  
14 target bucket.

15 Q So delaying the module to get to the site delayed  
16 timing of the completion of the project?

17 A It did.

18 Q People expecting it coming in on March 1. They're  
19 hanging around; don't have a module; they can't go  
20 to work?

21 A At least they can't go to work on that component.  
22 They could be reassigned to other things.

23 Q Right.

24 A It would also impact the hiring plans. So if you  
25 plan to staff up to a certain level, you knew the

1 modules weren't coming, you would probably scale  
2 back on the hiring plans. Certainly SCE&G did  
3 that. I believe the Consortium did that as well.  
4 Another implication of the modules was that as a  
5 mitigation plan some of the submodules were  
6 actually sent to the project site and finished at  
7 the project site. The project's workforce were  
8 actually better at nuclear safety-related  
9 construction than the Lake Charles workforce was.  
10 And so the fabrication of these submodules  
11 actually went better when they were shipped to the  
12 site. So the owners at both sites -- both the  
13 Vogle site, the Southern Company site, and the VC  
14 Summer site -- allowed some of these modules to be  
15 shipped incomplete and finished there at the site.

16 Q You visited Lake Charles?

17 A I visited Lake Charles.

18 Q How many times?

19 A I think it was three times.

20 Q Do you recall who you dealt with at Lake Charles?

21 A Each time that I went to Lake Charles there  
22 were -- the first time it was Shaw. Thereafter, I  
23 think it was CB&I, or Chicago Bridge & Iron.  
24 There were Westinghouse personnel there at each of  
25 the meetings that we had. At one meeting it was

1 joint between SCANA and Southern Company and then  
2 Westinghouse and I think it was Shaw Group but  
3 could have been after transition to CB&I, but I  
4 think it was Shaw Group. And so we dealt with  
5 some -- a leadership person at either Shaw or  
6 CB&I. And then plant manager would have been  
7 involved in those meetings. The first plant  
8 manager I remember because he was a College of  
9 Charleston graduate, which seemed unusual for  
10 somebody in Lake Charles, Louisiana. Shaw  
11 executives were there, Ben Barrick (ph) for  
12 example. Shaw executive -- was there. So it was  
13 a -- there were large number of folks that were  
14 there . . .

15 Q Would there usually be a follow-up report or a  
16 cleanup report for the meeting?

17 A There was -- I don't -- I wouldn't categorize it  
18 as a report. They were communications between the  
19 entities after the meetings. I should point out  
20 Santee Cooper went to the meetings as well to Lake  
21 Charles facility.

22 Q Did Mr. Carter go?

23 A Mr. Carter was there. I don't remember if he went  
24 on every one of the meetings. He wasn't there  
25 each time that I went, but he was certainly there.

1 Q Do you recall in general what Lake Charles  
2 basically said was their cause of the delay?

3 A Lake Charles had a lot of excuses. But the Lake  
4 Charles folks, whether they were Shaw or whether  
5 they were CB&I -- again, the facility changed  
6 hands -- would like to blame design changes coming  
7 from Westinghouse and material changes coming from  
8 Westinghouse. Again, the Westinghouse folks would  
9 blame quality workforce, those kind of things.  
10 The Lake Charles facility also received from the  
11 Nuclear Regulatory Commission a number of  
12 inspections. A number of those inspections were  
13 critical of Lake Charles, whether it was Shaw or  
14 whether it was CB&I. And shortly after CB&I  
15 acquired the facility they got what's called a  
16 Safety Conscious Work Environment letter from the  
17 Nuclear Regulatory Commission, which in the  
18 nuclear arena is a fairly big deal.

19 Q What were they basically being cited for?

20 A In the Safety Conscious Work Environment letter --  
21 which, again, the NRC doesn't dole those out; they  
22 do dole those out judiciously -- it was  
23 intimidation of the workforce, being told not to  
24 raise problems.

25 Q Not to --

1 A Not to raise problems or issues. There were  
2 documentation issues that looked like supervision  
3 and craft were not being honest on some of the  
4 reporting of some of their -- with some of this  
5 documentation. But, in general, a Safety  
6 Conscious Work Environment means that the NRC  
7 wants people to be free to raise problems and  
8 issues. So this letter, you know, basically said  
9 people -- the workforce does not feel free to  
10 raise problems and issues and you need to correct  
11 those issues.

12 Q Was that corrected? At least according to the  
13 NRC?

14 A Yes, it was corrected.

15 Q So the Lake Charles facility was built in part due  
16 to this renaissance and was originally owned by  
17 Shaw who owned 20 percent of Westinghouse?

18 A One correction there. I think the facility was  
19 built exclusively to make AP1000 modules.

20 Q Okay. But it was owned by Shaw?

21 A Owned by Shaw.

22 Q Did Westinghouse have any ownership in it?

23 A No. Westinghouse didn't have any ownership in it.  
24 Now, Westinghouse would have a consortium  
25 agreement with Shaw Group, an agreement that SCE&G



1           was not privy to. I don't know what that  
2           agreement would have said about how the facility  
3           was run or operated or costs to share, that kind  
4           of thing. But Westinghouse did not have any  
5           ownership that I'm aware of in the facility  
6           itself.

7    Q       Once the modules were shipped, were they pretty --  
8           was it efficient? Were they efficiently  
9           constructed and put together or was that an issue  
10          as well?

11   A       I would say that for the first module there was --  
12          it was not as efficient as it needed to be. That  
13          CB&I did have some issues and problems with  
14          fabricating that first big modules on-site.  
15          Thereafter, I think it got much more smooth.

16   Q       Do you recall what the problems were on the first  
17          module?

18   A       They did have some problems with fit-up, as in you  
19          put two modules together and they're supposed to  
20          look like this and maybe perhaps they don't, so  
21          the walls would need to be straightened. They had  
22          some issues with welding, automated welding  
23          techniques versus manual welding techniques.  
24          While in general the site was not working,  
25          actually at that time, they were working around

1 the clock in the modules assembly building itself.  
2 The night shift was not as productive as the day  
3 shift. And it looked like they had a lot of  
4 people calling in sick on the night shift, that  
5 kind of thing. So there were issues with assembly  
6 of the module, even once the submodules were  
7 shipped to the site.

8 Q In your contract with Westinghouse was there  
9 penalty clauses if they didn't meet the schedule?

10 A There were.

11 Q Did E&G ever enforce its penalty to clauses?

12 A E&G let the contractor know at one point that they  
13 would enforce the penalty clause, so the penalty  
14 clause schedule would be called Schedule  
15 Liquidated Damages. Those Schedule Liquidated  
16 Damages would not occur until the contractor went  
17 back past the contractual guaranteed substantial  
18 completion date. So the guaranteed substantial  
19 completion date, or GSCP, was a contractual  
20 kickoff for current liquidated damages, and they  
21 would accrue over a period of time. So while they  
22 never actually got to that point, there was a  
23 period of time in 2015 where SCE&G did tell the  
24 contractor they would attempt to collect  
25 liquidated damages.

1 Q Were those damages resolved in the agreement that  
2 resulted in the fixed contract?

3 A The October 2015 agreement that resulted in the  
4 fixed-price option did change the liquidated  
5 damages provision and did change the guarantee  
6 substantial completion date such that the  
7 contractual point where liquidated damages would  
8 accrue were moved and the amount of liquidated  
9 damages was increased.

10 Q Steve, you're aware of the lawsuit that was filed  
11 by Vogle, right? Vogle Construction?

12 A Which lawsuit are you talking about?

13 Q The one against Westinghouse.

14 A I'm aware that there was a lawsuit or lawsuits  
15 between the Consortium and Summer. And it may  
16 have been there were, I think, four owners that at  
17 Southern Company, so there may have been four  
18 owners.

19 Q Who are there -- Westinghouse was being sued for  
20 construction issues, timing, things like that down  
21 in Georgia?

22 A I was aware of lawsuits in Georgia, yes.

23 Q And is that called the Vogle Plant or where is  
24 that? Down in Augusta?

25 A It's, yeah, Waynesboro, Georgia not far from

1 Augusta, and it's called Vogle project, yes.

2 Q So those lawsuit or suits came out of that  
3 project?

4 A That's correct.

5 Q Did you have any meetings or discussions with  
6 anyone about the lawsuits that were being filed or  
7 served or in place against Westinghouse?

8 A No.

9 Q Why not?

10 A Well, a couple of reasons. One, the first lawsuit  
11 that I'm aware of was relative to a problem that  
12 was not applicable to the VC Summer site.

13 Q Do you remember what it was?

14 A It had to do with backfill and the amount  
15 safety-related backfill that was -- that had to be  
16 used. I'm aware of that because Southern Company  
17 was public about the issue. Their conditions,  
18 their soil conditions, the conditions underneath  
19 the plants were different in Waynesboro than they  
20 are in Jenkinsville. So the same issue was not  
21 applicable to that VC Summer site. And then  
22 secondly, commercial issues and terms, we were not  
23 allowed to talk about with the Southern Company.

24 Q You were not going to talk about them?

25 A No.

1 Q Why?

2 A Two reasons. One, Westinghouse didn't want it.  
3 They had confidentiality clauses around from both  
4 companies both going both ways. They didn't want  
5 us talking commercial terms with Southern; they  
6 didn't want Southern talking commercial terms with  
7 us. And I was advised against it by SCANA  
8 attorneys.

9 Q Not getting into the legal advice, but from a  
10 business standpoint, you had asked to have the  
11 permission to look into it?

12

13 MR. BALSER: Object to the form of the  
14 question to the extent that it calls for the  
15 reveal of any discussions that he had with  
16 SCANA . . .

17

18 Q Let me just ask it this way: Were you desirous  
19 wanting to look into the issues that were being  
20 raised by the lawsuits?

21 A To the extent that I knew what the issues were,  
22 for example in this backfill issue, that was not  
23 applicable to us so I would not have had a desire  
24 to look at that.

25 Q Sure.

1 A But would I have been desirous to know other  
2 commercial terms or issues? Certainly I would  
3 have liked to have done that from a business  
4 perspective. But I believe that there are  
5 issues -- there are some legal issues around  
6 that . . .

7 Q Now, when you say "legal issue" are you talking  
8 about the confidentiality issues?

9 A Certainly that. But beyond that there are other  
10 legal issues.

11 Q From your standpoint, what are those --  
12

13 MR. BALSER: I'm going to -- I object to the  
14 question to the extent it calls to reveal anything  
15 you learned from SCANA attorneys regarding any  
16 issues.  
17

18 A I would have to divulge -- to answer your  
19 question, I would have to divulge my  
20 conversations --

21 Q Don't tell him. Just tell me what you . . .

22 A I'll whisper it to him.

23 Q So let me ask you this. I'm just curious and I  
24 hadn't even thought about this until now. You  
25 know Westinghouse is -- y'all got problems. We

1           could go on for days talking about the timeline,  
2           can't we? Maybe weeks. We can go on a long time,  
3           can't we? But there were construction problems  
4           from the beginning and some of which try to  
5           resolve and try to resolve and they never got  
6           resolved. That's fair, isn't it?

7    A       Some were not resolved by the time construction  
8           ceased, that's right.

9    Q       Sure. And did the -- did the Summer Jenkinsville  
10           project start about at the same time as Vogle?

11   A       Started at roughly the same timeframe as Vogle. I  
12           think Vogle probably started a little bit ahead of  
13           VC Summer.

14   Q       You mentioned a minute ago that Westinghouse  
15           didn't want you to talk to the Vogle -- to the  
16           issues, or I'm not sure who you talked to, but  
17           didn't want to discuss those. Did they tell you  
18           why?

19   A       They viewed the contracts as separate and distinct  
20           and proprietary. So they didn't want -- what  
21           Westinghouse did not want was Vogle cherrypicking  
22           what they liked from the Summer contract and  
23           trying to push Westinghouse into that and vice  
24           versa.

25   Q       Well, I get that on the contractual terms --

1 A They also --

2 Q -- I'm talking about the lawsuit.

3 A They also --

4

5 MR. BALSER: Let him finish.

6

7 A They also were in -- Westinghouse was also in  
8 contract negotiations with other entities to  
9 build 51,000 active contract negotiations. So  
10 they didn't want those contract negotiations  
11 flavored by knowledge in the Southern contract or  
12 the Summer contract.

13 Q Okay. But once a contract was entered into and  
14 the performance of the contract got started, did  
15 Westinghouse suggest or imply or ask you not to  
16 talk to Vogle about those issues, the lawsuit  
17 issues?

18 A They did.

19 Q Who did you talk about those?

20 A That would have been when the first lawsuits --  
21 lawsuit came out. I think it was a relatively  
22 early process. I don't remember who at  
23 Westinghouse it was. I don't recall if it was Dan  
24 Litman (ph) at that point in time. There were a  
25 lot of changes in leadership at Westinghouse, so I



1 had to deal with a lot of different  
2 people/personalities.

3 Q Sure.

4 A I have a feeling it was Dan Litman at that point  
5 time.

6 Q Do believe that you may have gotten correspondence  
7 from them concerning this?

8 A There may have been correspondence, which would  
9 have been in the form of a -- what SCE&G and the  
10 Consortium call a project letter. I don't know  
11 that that exists. I certainly got verbal  
12 communication from Westinghouse that they did not  
13 want us to interface with the Southern Company on  
14 commercial terms.

15 Q Okay. I've read that term "commercial terms" in  
16 some of the writings here. What does that mean?

17 A Commercial terms mean how the contracts are  
18 structured, what you pay in each different  
19 category, so basically it's how the contract is  
20 built.

21 Q Okay.

22 A But they extended that to legal actions based on  
23 how the contract was built.

24 Q And what was your response to Mr. Litman or  
25 whoever you talked with?

1 A My response, in general, when Westinghouse would  
2 claim something as proprietary or business  
3 confidential was to ask them to reconsider. But  
4 with regard to the commercial terms at Southern, I  
5 didn't see much point in arguing that. It seemed  
6 futile, based one of the confidentiality  
7 agreements that the entities had signed with each  
8 other and that the advice that we talked about  
9 that I got from the lawyers.

10 Q Let's say I have not seen the litigation papers.  
11 I guess those are public documents, aren't they?

12 A Which litigation papers?

13 Q From the Vogle papers against Westinghouse. Those  
14 would be filed in a court of law?

15 A I have no knowledge of that.

16 Q They weren't? They were mediations and  
17 arbitration type things?

18

19 MR. BALSER: DRVs.

20

21 Q DRVs. Did you inquire of Westinghouse of whether  
22 they were having construction -- not commercial  
23 but construction -- issues similar to yours down  
24 in Georgia?

25 A Certainly, yes.

1 Q Okay. I'm going toward that more so than the  
2 commercial things.

3 A Okay.

4 Q Did you talk with anyone other than Litman about  
5 that?

6 A Yes.

7 Q Compared your problems with Vogle?

8 A Yes. Yes.

9 Q Who did you talk to?

10 A Rick Perez.

11 Q Who is he?

12 A He was the chief operating officer for  
13 Westinghouse.

14 Q Okay.

15 A I talked with Jeff Benjamin, who was a senior VP  
16 at Westinghouse for nuclear projects. I spoke  
17 with each of the project managers who were VP  
18 level person at Westinghouse, so an officer at  
19 Westinghouse, but their title on the project was  
20 project manager to ensure that the project manager  
21 was talking with his counterpart on the Vogle  
22 project to see that issues were being resolved and  
23 the issues they would have, we would have. SCE&G  
24 personnel, met frequently with folks from Southern  
25 Company on the Vogle project just to make sure

1           that we were up to speed on what was going on  
2           there and they were up to speed with us. There  
3           were some equipment that we shared, mostly rigging  
4           and lifting type equipment for specialty  
5           components. We would have to coordinate where  
6           those were and what site needed them when.

7           When --

8       Q     They would just truck them back and forth?

9       A     Yes. Yes. And there were also quarterly meetings  
10           with the Nuclear Regulatory Commission that were  
11           started at some point probably in that 2014 time  
12           frame, '13, '14 time frame, where both sites  
13           participated -- both Southern and SCE&G  
14           participated with the Nuclear Regulatory  
15           Commission, both the regional staff from Atlanta  
16           and their headquarter staff in Washington, and  
17           alternated each quarter which site the meeting  
18           would take place, which it involved on site tools.  
19           So the two companies, the two sets of owners, did  
20           a lot of things to make sure that from a  
21           construction perspective things would go smoothly  
22           as they could.

23       Q     So through those meetings, report back -- reports  
24           back to you from people at SCE&G going down to  
25           Vogle and vice versa. Did you learn from the

1 construction issue or what construction issues  
2 were at issue?

3 A We -- the company -- SCE&G certainly learned from  
4 experiences at Vogle and Vogle certainly learned  
5 from construction experiences with Summer. As an  
6 example when VC Summer poured base mat, which is  
7 the -- for the nuclear, which is what all of the  
8 nuclear ponds will eventually sit on. It's a very  
9 large, it's six-foot thick monolithic pour so  
10 there's no joints in it. You just pour the whole  
11 thing at one point in time, you know, thousands of  
12 yards of concrete. It took 50, 51, 52 hours  
13 continuous pour. VC Summer got to that point just  
14 before Vogle did. Vogle had personnel there  
15 observing concrete pour to try to learn lessons on  
16 how it went and then tried to incorporate those  
17 lessons in a comparable pour at Vogle, the  
18 comparable first pour at Vogle took a little less  
19 time because of the learnings of Summer.  
20 Similarly, when Vogle would do something before  
21 Summer would get to it then the Summer personnel  
22 would be at the Vogle site to observe. If an  
23 issue was discovered at either of the sites, they  
24 would have to deal with the Nuclear Regulatory  
25 Commission. The site discovering it would take

1 the lead in resolving that issue with the NRC. So  
2 it was a fairly collaborative arrangement between  
3 the two companies on the construction terms, not  
4 commercial.

5 Q Did you understand that the litigation between the  
6 Vogle Groups and Westinghouse was a construction  
7 issue? Design issue seems like that's similar to  
8 yours.

9 A Again, the first lawsuit I'm aware of was the  
10 Bechtel issue. Subsequent lawsuits, I'm not sure  
11 what -- you know, I may have known at one point  
12 time. I don't recall what the substance of those  
13 lawsuits was.

14 Q But you knew they were in litigation?

15 A I knew they were in litigation.

16 Q And during these meetings the -- y'all are two  
17 companies side-by-side, in essence. Your  
18 territory backed up to each other. You probably  
19 shared some real electricity, things like that.

20 A We do.

21 Q So you had a working relationship with that group  
22 and y'all didn't get a feel or an understanding of  
23 what their litigation was about?

24 A Based on advice from our attorneys, I'm not going  
25 to put myself at risk or in jeopardy. So I wasn't

1 going to pursue it. And I don't know that it  
2 would have much difference. There were some  
3 differences that we were aware of in the contract,  
4 so the Vogle contract and Summer contract did have  
5 some differences in them. I don't know what all  
6 those differences were, but became aware, largely  
7 through Westinghouse, of the differences.

8 Q Did you learn through these interoffice meetings  
9 between the two that there were some issues  
10 relating to timing, the schedule, things like  
11 that?

12 A Well, certainly we were -- SCE&G was aware of the  
13 issues going on at the Vogle site and the Vogle  
14 site was aware of the issues going on at the  
15 Summer site. Largely, they were the same issues.

16 Q Okay. So I don't have to beat this thing to  
17 death, they were having similar issues that y'all  
18 were having at Jenkinsville?

19

20 MR. BALSER: I think we've moved passed that.

21 MR. BELL: Not quite.

22

23 A So the issues on the Southern Company project in  
24 Waynesboro were similar to the issues the were  
25 happening at the Summer project in Jenkinsville.

1 Q Okay. So my next question then is if they were  
2 having similar issues in Waynesboro similar to  
3 Jenkinsville, were they getting theirs corrected  
4 or were they still having similar issues with  
5 correction?

6 A Based on our interface with both the contractor  
7 and with Southern Company and our troops over  
8 there to visit, it appeared that the Southern  
9 Company was suffering from the same issues and the  
10 resolutions were similarly impacted, as in they  
11 were not getting to resolution any faster than the  
12 Summer site was. And the fact -- you know, I said  
13 that the Southern Company project actually started  
14 a little before the Summer project. But when the  
15 project -- when the Summer project was terminated  
16 it was, I would say, a little ahead of the  
17 Southern Company project. For example, things  
18 like some of the big picture milestones like some  
19 generator sets, reactor vessel sets, those kind of  
20 things, the Summer project progressed ahead of the  
21 Vogle project on some of these. In other words,  
22 if there was a resolution to an issue that worked  
23 at Southern then SCE&G would be aware of it and  
24 would look to implement the same kind of  
25 resolution in the contract.



1 Q Let's go, please, on Exhibit No. 1 to the last  
2 paragraph. It's up on the screen. And could you  
3 read that paragraph into the record for me,  
4 please, Steve? That one and the --

5 A The one that starts with Kevin?

6 Q No. Let's start with "The consortiums inability,"  
7 the first page?

8 A The last paragraph of the first page, okay.

9 Q I'm sorry? Say it again.

10 A The last paragraph of the first page?

11 Q Yes, sir.

12 A (As read) "The consortiums inability to deliver  
13 submodules has been a major source of concern and  
14 risk for this project for a long time. At the last  
15 president's meeting on June 21, 2013, the  
16 Westinghouse/CB&I discussion demonstrated they do  
17 not function well as a team to resolve critical  
18 project issues. The Consortium scheduled  
19 performance including any associate module delay  
20 cost currently embedded in the project cost for  
21 future claims against the project are simply  
22 unacceptable to Santee Cooper. Our view is that  
23 the consortium's inability to fulfill their  
24 contractual commitments in a timely manner places  
25 the project's future in danger. SCE&G and Santee

1 Cooper need to examine together the remedies  
2 provided for under the EPC for the consortium's  
3 failure to perform and exercise the fullest extent  
4 of these remedies to project -- to protect our  
5 interest."

6 Q All right. Let's talk about -- this is, again, a  
7 letter dated August 23, 2013.

8  
9 MR. BALSER: If you're going to move onto  
10 another exhibit, might we break for lunch if this  
11 is a good stopping point?

12 MR. BELL: Sure. I'm sorry. That's a good  
13 idea. That all right with you, Steve?

14 THE WITNESS: Sure.

15 VIDEOGRAPHER: We will go off the record.  
16 The time is approximately 12:18 p.m.

17  
18 (A lunch break was taken from 12:18 p.m.  
19 until 1:26 p.m.)

20  
21 VIDEOGRAPHER: We are now back on the record.  
22 The time is approximately 1:25.

23  
24 BY MR. BELL (Continuing):

25 Q Mr. Byrne, going to the last paragraph you read

1           into the record, I believe it begins on the first  
2           page of this letter from Mr. Carter, Lonnie  
3           Carter, to Mr. Marsh dated August 3, Exhibit  
4           No. 1. Do you see that? If you don't mind, can  
5           we break that last paragraph down and talk about  
6           kind of some of the subjects in there?

7    A    Certainly.

8    Q    Okay. First sentence says, "The Consortium's  
9           inability to deliver submodules has been a major  
10          source of concern and risk for this project for a  
11          long time." Now, the three things in that  
12          sentence that make me curious. One, the term "for  
13          a long time." Do you know how long that the  
14          inability of the Consortium's submodule delivery  
15          has been a -- how long has that been a concern?  
16          Since the beginning of the contract?

17   A    No.

18   Q    Approximately what are we talking about?

19   A    Yeah, so the module -- the module facility was  
20          only actually constructed in the 2009/10 time  
21          frame.

22   Q    Okay.

23   A    I believe that the module facility started this  
24          production in the 2010 time frame.

25   Q    Okay.

1 A And so it would be sometime thereafter.

2 Q Do you remember when the first module was  
3 delivered. I say module. Module or submodule?

4 A I don't remember, no.

5 Q Okay. Was it on time?

6 A I don't remember.

7 Q But Mr. Carter, who is I guess president and CEO,  
8 Chief Executive Officer of Santee Cooper, he adds  
9 to that term "concern and risk for this project."  
10 And you read this letter at the time or got a copy  
11 of it somewhere down the line?

12 A I don't have a specific recollection of reading --

13 Q Okay. You were aware that Santee expressed its  
14 concern for a while?

15 A I was aware of the concerns Santee expressed, yes.

16 Q And so when a CEO from the partner of SCE&G  
17 indicates in his letter that he's concerned about  
18 the risk of this project, do you believe that at  
19 time in 2013 that that was something that E&G  
20 agreed with or disagreed with?

21 A I would say that SCE&G agreed that the problems at  
22 the module facility were creating a problem for  
23 the project --

24 Q All right.

25 A -- and could have an impact on schedule.

1 Q Okay. But the term I'm asking for is "risk."

2 A Uh-huh.

3 Q And maybe I'm looking at the term differently than  
4 what Mr. Carter was, but, reading it on face  
5 value, you say "risk for the project," it sounds  
6 like it could be something that would make the  
7 project not complete or not finalized. Did you  
8 read it that way?

9 A Well, as I read it here today, knowing what I know  
10 about the project and knowing Mr. Carter, I would  
11 take from this that what he meant was risk to the  
12 schedule.

13 Q Well, it was during 2013 that Santee started  
14 trying to sell its interests. Isn't that correct?

15 A I don't remember the exact time frame, but it  
16 would be in that general time frame, I think yes.

17 Q And they were discussing the Duke Power to sell  
18 their interest?

19 A They did have discussions with, as I understand  
20 it, a number of parties, but certainly including  
21 Duke Power.

22 Q And y'all -- E&G was concerned that if that would  
23 take place that it would look bad on the investor  
24 community?

25 A I'm not aware of that.

1 Q Did you, or anyone that you're aware of, express  
2 any concerns about Santee selling or attempting to  
3 sell their interest?

4 A I'm not aware that anybody had any difficulty with  
5 Santee selling a portion of their interest,  
6 provided that it was a worthy counter party, as in  
7 somebody that would be -- would understand the  
8 nuclear construction and somebody that would have  
9 the wherewithal.

10 Q I don't recall, and I'm not sure I've even seen  
11 the contract between E&G and Santee, y'all's  
12 partnership contract, but was there a provision  
13 that one of the partners could get out or sell out  
14 if they wish?

15 A Yeah. Of course, I don't have the agreement with  
16 me. But there was a construction and an operating  
17 agreement and that agreement did contemplate that  
18 one or either -- either of the parties could exit  
19 the project.

20 Q What it be fair to say that the impact of the  
21 increased costs that this project was incurring  
22 was having a larger impact on Santee's customers  
23 than on E&G's customers because they had less  
24 customers?

25 A Are you saying that Santee has zero customers?

1 Q Yes.

2 A I'm not sure that that's the case. Generally, the  
3 way that Santee Cooper would talk to SCE&G about  
4 customers, they would include customers of the  
5 co-ops. And so I think when you include all of  
6 the customers of the co-ops plus Santee Cooper's  
7 direct customers, they may be fairly close in  
8 size. And from a megawatt perspective, I think  
9 Santee Cooper peaked at a higher megawatt level  
10 than SCE&G.

11 Q There's some documents that address the cost per  
12 customer for E&G at Santee. And it seemed to me,  
13 when I read them, that the customers at Santee had  
14 a higher cost per customer for this increased  
15 cost. Do you know why that would be or are you  
16 familiar with that at all?

17 A I don't know that to be the case. I don't know  
18 why that would be.

19 Q All right. The next sentence on Mr. Carter's  
20 letter says (as read) "At the last president's  
21 meeting on June 1 -- June 21, 2013, the  
22 Westinghouse and CB&I discussion demonstrated they  
23 do not function well as a team to resolve critical  
24 project issues." Was Westinghouse and CB&I at  
25 that meeting or was that just a meeting for the

1           presidents and their staff with Santee and E&G?

2       A     The president's meetings always included the CEO's  
3           of the four entities, so the two owners and the  
4           two Consortium partners.

5       Q     Okay. Do you remember if you attended the June 21  
6           meeting?

7       A     I don't recall if I attended or not. I may have,  
8           I just don't recall.

9       Q     They have their minutes -- meeting minute notes  
10          for that meeting?

11      A     I don't know that there were minutes. If I  
12          attended, I would have taken notes in the meeting.

13      Q     Was there a readout or a summary of the meeting  
14          prepared, do you know?

15      A     Not that I'm aware of.

16      Q     Okay. But clearly Mr. Carter thought there was,  
17          at least from his standpoint, that CB&I and  
18          Westinghouse didn't function very well together.  
19          Do you agree with that?

20      A     If I consider what Mr. Carter wrote, yes.

21      Q     Did you agree with that assessment?

22      A     I'm not sure that I necessarily agreed to that  
23          assessment. What I do know is there were  
24          frustrations on the part of both owners, or I  
25          should say both co-owners, that the modules at the



1 Lake Charles facility were not being delivered in  
2 a timely manner and that the CB&I corporate  
3 structure had the fabrication and manufacturing in  
4 a different division than the folks who were  
5 trying to build the plants. So what Mr. Carter  
6 may have been referring to is this hierarchy at  
7 CB&I where fabrication and manufacturing, or F&M,  
8 didn't report to the power group.

9 Q So then that gets to the next sentence in that  
10 paragraph. It says, "The Consortium's scheduled  
11 performance. . ." That's the schedule that you as  
12 the owner, or one of the owners, would be given by  
13 the contract of Westinghouse. Is that correct?

14 A I'm not sure which schedule Mr. Carter's referring  
15 to. He could be referring to that overall project  
16 schedule that I think you're referring to. He  
17 could be referring to specific schedules for  
18 submodule delivery.

19 Q Well, the next sentence kind of helps on that. It  
20 says, "The Consortium's scheduled performance  
21 including any associated module delay cost  
22 currently embedded in the project cost or future  
23 claims against the project are simply unacceptable  
24 to Santee Cooper." Now, what was E&G's position  
25 on that?

1 A SCE&G's position on the delays coming from Lake  
2 Charles was that the costs were of the modules  
3 themselves were fixed and that the owners should  
4 not be responsible for costs associated with  
5 delays on the project stemming from module delays.

6 Q How about all the other delays? I mean, the  
7 modules weren't just the only problem?

8 A Well, you were asking me about this -- this  
9 sentence and what I agreed with that.

10 Q Right, but --

11 A That's what I was commenting on.

12 Q -- I was talking about, to me, what he's saying  
13 the Consortium's scheduled performance including  
14 the modules, not just the modules. "Currently  
15 embedded in the project cost are future claims  
16 against the project are simply unacceptable to  
17 Santee Cooper." And so not just the module  
18 issues, but the other delays and the other  
19 increased cost on the cost-plus basis?

20

21 MR. BALSER: Well, hold on. I object to the  
22 prefatory remarks. He didn't hear your question.

23 MR. BELL: All right. It was probably a bad  
24 question. I'll start over.

25 MR. BALSER: -- excuse.

1 MR. BELL: I've never . . .

2

3 Q I mean, isn't the real question here is not just  
4 the modules, but there were other problems in  
5 addition to modules that were created delays. Is  
6 that correct?

7 A There were problems other than modules that were  
8 creating delays. I believe that Mr. Carter, in  
9 this memo, was addressing modules, was  
10 specifically submodules from the Lake Charles  
11 facility, and including associated module delay  
12 costs. So I believe he was talking about -- when  
13 he said "Consortium's schedule performance" I  
14 believe was talking about modules. And when he  
15 said "delayed cost" I believe he was talking about  
16 delayed cost from the modules. So I believe that  
17 Mr. Carter's memo here was referencing the modules  
18 or submodules.

19 Q But outside of what Mr. Carter meant or didn't  
20 mean, the fact is there were more -- there were  
21 other problems in addition to the modules, weren't  
22 there?

23 A There were other factors that were causing delays.

24 Q Those delays were causing increased cost?

25 A The delays -- is that a question?

1 Q Yes, sir.

2 A Yes.

3 Q I'm sorry.

4 A The other delays were causing increased cost.

5 Q Mr. Carter says, "Our view is that the  
6 Consortium's inability to fulfill their  
7 contractual commitments in a timely matter" -- I  
8 think he meant manner -- "places the project's  
9 future in danger." You agree with that?

10 A I guess it depends on what you mean by -- or what  
11 he meant by "danger" and I don't know what he  
12 meant by "danger."

13 Q What do you -- what is your definition of danger,  
14 in this context?

15 A Well, I don't know that I have a definition of  
16 danger. And again, I don't know that I would have  
17 chosen that word anyway, so this is Mr. Carter's  
18 memo so you're asking me to try to figure out what  
19 Mr. Carter meant by danger.

20 Q May I suggest that maybe just for the purpose of  
21 my question that maybe "danger" might mean  
22 jeopardy? Let's just use that term and not put  
23 it -- not assign that term to Mr. Carter. But do  
24 you believe or do you have an opinion as to  
25 whether the Consortium's inability to fulfill

1           their contractual commitments in a timely manner  
2           placed the project's future in jeopardy?

3     A     I think that the Consortium's failure to live up  
4           to their contractual commitments certainly placed  
5           the schedule in jeopardy and certainly could have  
6           led to increase cost.

7     Q     Led to increase cost?

8     A     Yes.

9     Q     But not the project itself?

10    A     Not -- I believe then, and continue to believe,  
11           that the project could be built.

12    Q     You're familiar with the term "in the money,"  
13           aren't you?

14    A     I've heard the term, yes.

15    Q     And how does that -- what's that term mean in the  
16           electrical business?

17    A     I don't know that I've heard the term in the  
18           electrical business.

19    Q     Okay. Have you not read some articles and other  
20           comments about this project about being "in the  
21           money" or "out of the money"?

22    A     I have -- I do not recall reading any articles  
23           that talk about in or out of the money.

24    Q     So if I were to come up with a definition and "in  
25           the money" means, in this instance, that without

1 the BLRA and without the tax credit this would not  
2 have been a commercially economically, feasible  
3 project?

4 A Yeah. I think the company has been on record  
5 saying without the BLRA these projects could not  
6 have been built.

7 Q Right. And part of that analysis also had to do  
8 with whether you get the tax credit. Is that  
9 correct?

10 A The issue of tax credit relative to construction,  
11 the tax credits didn't come into play until after  
12 construction was over with.

13 Q But it does come into play from balancing how  
14 much -- if something costs \$10 and eventually get  
15 a credit for five, your overall cost is \$5, right?  
16 That's very simple.

17 A Sure.

18 Q But --

19 A But the production tax credits were going to go to  
20 the full advantage of the customer.

21 Q In what way?

22 A Inasmuch as the production tax credits were going  
23 to be a credit to the fuel clause which would have  
24 been a direct passthrough to the customer.

25 Q Well, it's kind of unique to say that because when

1 E&G got their settlement with Toshiba, I don't see  
2 any credits to the customer on that. Did --

3 A I'm not sure what the Toshiba settlement has to do  
4 with PTCs.

5 Q Well, it's no different. I mean, Toshiba paid  
6 money back, right? There was a settlement on a  
7 dispute.

8 A Are you talking about the Toshiba guarantee?

9 Q I'm talking about the dispute over money that E&G  
10 got.

11 A So that was --

12 Q I don't know what you call it.

13 A -- a Toshiba guarantee.

14 Q But it had to do with this project, didn't it?

15 A The project had nothing to do with production tax  
16 credits.

17 Q But it lessened the cost of the project because  
18 you got a refund?

19 A You were asking me about production tax credits?

20 Q No, sir. I'm asking you about the Toshiba refund.

21 A So what are you asking about?

22 Q I'm asking you when that money came back to E&G  
23 did you go to the PSC and say, "Look, we got money  
24 back to reduce our cost so that our customers will  
25 have a lesser rate"? Did you do that?

1 A Yes.

2 Q When did you do that?

3 A When?

4 Q Yes.

5 A Did that -- it was actually Jimmy Addison that  
6 explained that portion after the guarantee was --  
7 I think it was after the guarantee was finalized  
8 and then after the abandonment of the project.

9 Q Right. And do you remember what the reduction  
10 was?

11 A I think that the SCE&G portion was around  
12 1.1 billion. And I believe that Jimmy reported  
13 that taxes would have to be paid on that such that  
14 it would reduce the final impact to customers by  
15 about 700 million.

16 Q Okay. So that was a reduction in the cost of the  
17 project?

18 A That was a reduction that the company had proposed  
19 at a meeting with the Public Service Commission.

20 Q So the rates were reduced?

21 A I don't know that the rates were reduced. The  
22 company made a filing and the legislator requested  
23 the company withdraw the filing. So that filing  
24 was withdrawn subsequent to my retirement. They  
25 may have refiled.



1 Q So, as far as you know, to date the customers have  
2 not gotten any credit or any new reduction in  
3 their rates as a result of the Toshiba settlement?

4 A I don't know what has happened with the Toshiba  
5 settlement. I know what was proposed, and before  
6 any action had been taken I retired from the  
7 company. I have not been involved in that.

8 Q Do you know what E&G did with the money?

9 A I don't.

10 Q Were you involved in any discussions about that?

11 A I was not.

12 Q Mr. Carter's goes on to say that E&G and Santee  
13 Cooper "should examine together the remedies  
14 provided under the EPC for the Consortium's going  
15 failure to perform and exercise the fullest extent  
16 for the remedies to protect our interest." And  
17 those remedies would be set out in the liquidated  
18 damages and things like that in the EPC contract?

19 A Certainly there were liquidated damages provisions  
20 in the EPC contract. The EPC contract Schedule  
21 Liquidated Damages provision, though, would not  
22 come into play until after the -- much later in  
23 the project. All right. So much later than what  
24 Mr. Carter was talking about here.

25 Q So you couldn't get credit for it right now?

1 A No.

2 Q Was there any kind of limitation provision in the  
3 EPC contract in regards to a limit of liability  
4 Westinghouse may have?

5 A The EPC contract did contain a limitation on  
6 liability that I believe was 25 percent of what  
7 had been spent to date on the EPC.

8 Q Are there other limitation provisions?

9 A The liquidated damages were limited.

10 Q Is that the one that's 150 million?

11 A A 155.5, something along those lines, yes. That's  
12 a 100 percent basis number.

13 Q So if, for example, the project could cost -- I'm  
14 using these numbers so I can divide -- 4 billion  
15 then the limitation would have been a \$1 billion  
16 limitation?

17 A If --

18 Q In general terms?

19 A Yeah. If 4 billion had been spent then 1 billion  
20 would be the limited liability.

21 Q Okay. And earlier you mentioned when you went to  
22 the flat rate deal that you ended up paying for  
23 things in that settlement that you would not have  
24 otherwise had to have paid for in the earlier  
25 agreement. Explain that.

1     A     There was going to be a change to the premise of  
2           the EPC contract, whereas prior to that  
3           October 2015 agreement payments were made -- the  
4           payments were made based on a variety of streams.  
5           So there was a payment made for milestones. There  
6           were progress payments. Progress payments, in my  
7           mind, are a misnomer. They weren't really based  
8           on progress; they were based on time. And there  
9           would be invoices from the contractor for target  
10          and TNN. So you pay based on all of those  
11          factors.

12                 Going forward from the October 2013  
13          agreement, there was an agreement that the change  
14          would be to a milestone payment schedule. So it  
15          was called a construction milestone payment  
16          schedule. But there was a acknowledgment that it  
17          would take some period in time to negotiate that  
18          construction milestone payment schedule. So in  
19          the interim, Westinghouse wanted to -- they just  
20          kept cost neutral, which they said was  
21          \$130 million a month. The owners argued that they  
22          didn't think it was quite that much and there  
23          would be -- they would only be entitled to a  
24          lesser amount under the old contract way of  
25          paying, which Westinghouse agreed with. However,

1       since there was going to be a change in the  
2       premise of the project going forward and to pay  
3       for some of the mitigation activities, there would  
4       need to be a ramp-up and things like subcontracts  
5       and then the Fluor hiring that was going in place.  
6       And there were things that the contractor couldn't  
7       recover from the owners until it was placed in  
8       service. So they would not get credit in general  
9       for module work until the module was placed in the  
10      facility.

11             So their issue was that they have significant  
12      expenditures beyond what they were covering from  
13      our project, and asked that as a gap to get to  
14      this construction milestone payment schedule and  
15      make the needed improvements that we would agree  
16      on a fixed amount per month to be paid.

17   Q     Was there ever any discussion in the preliminary  
18      part of the contract to have any performance bonds  
19      in place?

20   A     There was a performance bond in the contract.

21   Q     Okay. And who was that with?

22   A     Well, the performance bond would have been the  
23      responsibility of the Consortium. But the owner  
24      would have to pay for the fee for the performance  
25      bond.

1 Q Explain that to me again. I understand the fee  
2 issue, but what was the first part?

3 A The Consortium would be responsible for bonding.

4 Q For buying the bond?

5 A For buying the bond. And the owners would be  
6 responsible for the cost of the bond itself.

7 Q So was a bond ever purchased?

8 A Yes.

9 Q From whom?

10 A I don't recall which financial institutions that  
11 were used.

12 Q And was any claims ever made to have the bond  
13 intervene and start working?

14 A I'm not aware of a claim. If there was a claim,  
15 that would have been handled by our legal  
16 department. But I'm not aware of a claim. And  
17 there was an overall negotiation for the Toshiba  
18 parental guarantee money and maybe that that money  
19 was folded into the parental guarantee agreement.

20 Q So you think that might have substituted for the  
21 bond?

22 A I wouldn't say necessarily substituted for the  
23 bond. But when the negotiation happened with  
24 Toshiba -- and, again, I was not directly involved  
25 in the negotiations for the Toshiba parental

1           guarantee, but I know that the parental guarantee  
2           amount negotiated was higher than the amount --  
3           was higher than the 25 percent paid by the  
4           contracts so far. So there were obviously other  
5           considerations that went into that parental  
6           guarantee.

7    Q     As part of the settlement, did you give up your  
8           rights to the bond?

9    A     I don't -- I wasn't involved in the negotiations,  
10           so I don't know.

11   Q     That's just a guess maybe, it might have folded  
12           in?

13   A     I'm just saying I'm not aware that there was a  
14           claim against the bond. Again, if there was a  
15           claim that would have been based on our legal  
16           department taking some action. And what happened  
17           with Westinghouse in the bankruptcy, I'm really  
18           not sure.

19   Q     So the bond guarantor would -- did Toshiba/Toshiba  
20           guarantee the bond?

21   A     Again, I wasn't involved with negotiating that  
22           bond and I'm not sure.

23   Q     Did y'all get copies of the bond?

24   A     I didn't get copies of it. I'm sure the company  
25           did.

1 Q Okay. So that's -- someone has that, right?

2 A Presumably.

3 Q Okay. And do you recall the amount of the bond?  
4 Did it cover the whole contract or did it cover a  
5 portion or do you know?

6 A No. It did not cover the whole contract. Again,  
7 the limited liability was 25 percent of the  
8 extent, so that would have been the max. There  
9 was a description of the bond in the EPC contract.  
10 I just don't remember off the top of my head what  
11 it said.

12 Q But if your limit of liability to the Consortium  
13 was 25 percent of what you've been paid, then it  
14 was extremely important for you guys not to have  
15 all these problems and increase and increase and  
16 increase the cost because then you were limiting  
17 yourself to what you could eventually get from the  
18 Consortium. Isn't that correct?

19 A I'm not sure I'm following you.

20 Q Okay. I don't have the contract in front of me,  
21 but let's just, for the purpose of my question,  
22 assume that the problems that you were having  
23 at -- on the construction issues were sufficient  
24 enough to breach the contract with Westinghouse.  
25 Just assume that. Then your limit to recover was

1           25 percent of what you had already paid. Is that  
2           what you told me earlier?

3

4                   MR. BALSER: Objection. Improper . . .

5

6   Q       Did I hear you wrong?

7   A       What I said earlier was you asked me if there was  
8           a limit of liability for the contractor, and the  
9           limited liability was -- the liability was limited  
10          to 25 percent of what had been paid to date under  
11          the EPC contract.

12   Q       Okay. So the contract might have been X and y'all  
13          spent half X in the limit of 25 percent of that  
14          half X. Is that correct?

15   A       That's correct.

16   Q       Okay. But if Westinghouse had just walked off of  
17          the site, "We're through. We can't do. We're out  
18          of money," and you could not collect even the  
19          25 percent, you still had parental guarantee,  
20          right, which was the 25 percent?

21   A       Well, the parental guarantee existed and was  
22          eventually collected, but the 25 percent limited  
23          liability applied to the parental guarantee as  
24          well. All right. So the amount paid under the  
25          parental guarantee couldn't be more than



1           25 percent of what had been paid on the contract,  
2           even though our financial team negotiated a number  
3           that was higher than that.

4    Q     And that's where you're not sure how the bond may  
5           have come into play?

6    A     That's correct.

7    Q     Okay. All right. Sorry to get off track.

8    A     No problem.

9    Q     At the end of Mr. Carter's letter he says that  
10           it's critical to get this going properly and he  
11           said that, "We should make clear to hold the  
12           Consortium accountable for the cost to our  
13           companies and should insist on the Consortium  
14           providing a realistic plan that could be executed  
15           by the Consortium to fabricate and deliver the  
16           submodules in a timely manner to complete the  
17           project on schedule." Do you know whether there  
18           were meetings with Santee and others and E&G to  
19           take this suggestion and run with it?

20   A     There were meetings with SCE&G, Santee Cooper and  
21           the Consortium on the module delivery issues, yes.

22   Q     Okay.

23

24                       (Whereupon, E-mail Correspondence was  
25                       marked Exhibit No. 2 for

1 identification.)

2

3 Q I've marked Exhibit No. 2 SCANA Bates number  
4 0034698, RP0034698. We'll put it up in a second.  
5 And this is a note e-mail, it looks, from Kevin  
6 Marsh the Paula Rowland. Who is Paula Rowland?

7 A Paula Rowland was Kevin's assistant.

8 Q Okay. And to Kevin Marsh, okay. This sounded  
9 like maybe an e-mail to himself or a little  
10 reminder of sorts. All right. It says, "Paula,  
11 will you please forward the following message to  
12 the directors. Thanks, Kevin." So the first  
13 paragraph -- and this is dated June 4, 2013. This  
14 is before the letter -- I didn't mean to get out  
15 of order, but before the letter of Mr. Carter. It  
16 says, "Late last week we received the module  
17 delivery schedule we asked CB&I to provide us."  
18 Is that correct?

19 A Yes.

20 Q Would you read the balance of -- I'll stop you  
21 when I want you to finish.

22 A "In our meeting with their new CEO, Phil Asherman,  
23 earlier this year we asked them to give us a  
24 module delivery schedule we could rely on for  
25 planning and scheduling purposes."

1 Q A little slower.

2 A (As read.) "We explained that Shaw had failed  
3 numerous times in providing an accurate schedule.  
4 They had given us their revised schedule, and  
5 based on that schedule the completion of Unit 2  
6 will slide from March 2017 until late 2017 or the  
7 first quarter in 2008. Completion of Unit 3 will  
8 also need to move, but they have not focused their  
9 efforts on that calculation at this time. We are  
10 in the process of reviewing a new schedule and  
11 will continue work with CB&I to gain an  
12 appropriate level of comfort with the new  
13 completion dates. The impact on costs has not  
14 been determined and will certainly be challenged  
15 -- be a challenge given our previous settlement  
16 with Shaw that we would not incur any additional  
17 costs related to module delivery delays. On a  
18 positive note, the last three modules have been --  
19 the last three modules we have received have come  
20 in ahead of the latest schedule dates. Too early  
21 to tell if this will continue."

22 Q Stop there, please. So at this juncture,  
23 Mr. Marsh is indicating that the date of  
24 completion for both units will have to be moved  
25 forward?

1 A Move backward.

2 Q Will take longer?

3 A Will take longer.

4 Q Okay.

5 A Yes.

6 Q Do you remember in 2013 when the petition that  
7 year was made to the PSC? Approximately?

8 A I don't believe there was a petition made to the  
9 PSC in 2013.

10 Q Okay. So the next one would have been in '14?

11 A I believe the next one was '15.

12 Q Okay. We couldn't find a couple of those. I was  
13 worried I couldn't -- in 2015 was the completion  
14 date moved in your PSC petition?

15 A In 2013?

16 Q '15?

17 A '15. In 2015, the completion date was moved in  
18 the petition.

19 Q Do you remember what it was right off? When it  
20 was moved to?

21 A I believe that it was June of '19 or June '20.

22 Q Still in time to meet the deadline for the tax  
23 credit?

24 A It was still in time to meet the deadline for the  
25 construction tax credits.

1 Q The next paragraph, the second line -- or the  
2 first line talked about an upcoming analyst  
3 presentation in New York tomorrow. Did you attend  
4 that presentation?

5 A I did.

6 Q Did you make the presentation?

7 A There was -- this was an analyst presentation that  
8 involved all aspects of the company, so there were  
9 a number of people who made a presentation. I  
10 certainly made a presentation on the construction  
11 project at that meeting.

12 Q And I assume at that meeting you -- we talked  
13 about the delays, you talked about the timing  
14 having to be forward, things like that?

15 A Talked about the delay in the schedule, yes.

16 Q You were talking about the completion date having  
17 to be moved?

18 A Yes.

19 Q Did you indicate, or did someone indicate, what  
20 the increased costs would be for the delays?

21 A I don't believe that we had an increased cost at  
22 that point in time.

23 Q But you expected one, right?

24 A We expected certainly a frank discussion with the  
25 Consortium on the cost.

1 Q Right. But did you discuss increased cost with  
2 the analyst?

3 A I don't recall what was discussed relative to  
4 cost.

5 Q If it wasn't discussed, would that be something  
6 that in hindsight should have been discussed?

7 A As I said, I don't know that I didn't discuss it.  
8 I just don't recall if it was discussed or not.

9 Q Very good. And then Mr. Marsh says, "While we  
10 cannot determine the actual cost of the delay at  
11 this point, we're doing our best to define some  
12 preliminary boundaries on the cost of the delay to  
13 keep the market from assuming the worst. Jimmy,  
14 Steve and I will be working on this today in  
15 preparation for the meeting tomorrow. I'll keep  
16 you posted." So do you recall discussing what the  
17 presentation being relative to traditional cost?

18 A I don't have a specific recollection of it.

19 Q All right. I have marked for Exhibit No. 3, a set  
20 of documents ORS 00011441, 444, 449, 450 and 455.  
21 This is entitled "VC Summer Nuclear Deployment  
22 Project, Units 2 and 3, Board of Director  
23 Meetings." Did you attend this board meeting, Mr.  
24 Byrne?

25 A No.

1

2

(Whereupon, VC Summer Presentation was  
marked Exhibit No. 3 for  
identification.)

4

5

6

Q You did not? Did you normally attend board  
meetings?

7

8

A No. This is a Santee Cooper board meeting.

9

Q Okay. Very well.

10

A I did not normally attend Santee Cooper board  
meetings.

11

12

13

MR. BALSER: I object to Exhibit No. 3 as  
incomplete. I mean, feel free to keep  
questioning --

15

16

MR. BELL: I don't mind supplementing and  
completing it.

17

18

MR. BALSER: Yeah. It's just not a complete  
record of the --

19

20

MR. BELL: I was kind of looking at it  
myself, figure out what it was.

21

22

So, Madam Court Reporter, we will substitute  
a complete copy of Exhibit No. 3, which would  
cover the PowerPoint, if you'll remind us.

23

24

25

1 Q I know you weren't there, so let's look at this  
2 kind of with fresh eyes. What do you think?

3 A Yeah.

4 Q All right. So let's go to page 2, I guess, 1444,  
5 and it talks about a Unit 2 Schedule Delay  
6 Summary. And to the left -- to the left what does  
7 COL mean?

8 A Combined Operating License.

9 Q Okay. And it has the base contract in 2011. Do  
10 you see that?

11 A I see that.

12 Q And then there is a delay of COL. Do you know  
13 what that is? What that -- was there a delay of  
14 COL?

15 A Yes. So this talks about the owners receiving the  
16 license from the nuclear regulatory commission.

17 Q Right.

18 A And the license was originally forecasted to be  
19 issued in July 2011.

20 Q Right.

21 A But the NRC did not issue the license until March  
22 of 2012.

23 Q Okay. So I'm looking over to the 2016 line, the  
24 gray line, and it says, "Base Contract with  
25 Substantial Completion." Do You see that?



1 A I do.

2 Q And was that approximately April of 2016?

3 A It was.

4 Q And the COL delay, according to this document,  
5 caused the delay -- or should have caused it to  
6 March of 2017?

7 A That's correct.

8 Q Okay. Do you agree with those dates so far?

9 A Yes.

10 Q Okay. And have you seen this before?

11 A No, I haven't.

12 Q And where it says "Module Delay, December to  
13 February of '17 and '18," do you know was there a  
14 module delay until that time frame?

15 A That's what the -- the memo that Mr. Marsh was  
16 having sent to the Board of Directors is  
17 discussing. So this was dated June 4, 2013, and  
18 it says last week we received a module deliver  
19 schedule that we had asked CB&I to provide. That  
20 module delivery schedule received in late  
21 May/early June.

22 Q In what year?

23 A Of 2013.

24 Q Right.

25 A Was this -- was reflected in this delay.

1 Q So where it has on the right the little red line,  
2 the red column, and it has Module Delay, what was  
3 that date reflective of?

4 A That's the delay that the contractor gave to the  
5 owners. So based on their updated module delivery  
6 schedule, the overall impact of -- or the impact  
7 of the overall schedule was going to be a  
8 difference in between nine and 12 months.

9 Q I got you. So at this point in time, which was  
10 June of '13 --

11 A Right.

12 Q -- they expected the module delay to extend the  
13 substantial completion to December to February of  
14 2018?

15 A Correct.

16 Q Okay. Let's go to 449, please. And here's an  
17 estimate. Did E&G give estimates to Santee Cooper  
18 as the cost of the delays?

19 A Well, Santee Cooper had personnel that were  
20 embedded with the new nuclear team.

21 Q All right.

22 A So would have had access to all of the financial  
23 information of SCE&G Financial Group had. Santee  
24 Cooper, though, was capable of generating their  
25 own cost estimates. And of course, their

1 estimates were 45 percent numbers, and we often  
2 times use the 45 percent as approximately for  
3 their cost. Take a 100 percent number ratio to  
4 45 percent is approximately the cost. But their  
5 accounting was a little bit different than SCE&G's  
6 accounting. The cost of money was different,  
7 those kinds of things. So they're often times  
8 small differences in Santee's numbers other than a  
9 simple ratio of SCE&G cost.

10 Q Would you mind just looking down the numbers. And  
11 I'm not asking you to verify the dollar exactness,  
12 but from a general sense, right there 45 percent,  
13 does that look to be in line with what E&G was  
14 thinking at the time?

15 A Again, I'm reading this for the first time, and  
16 it's not an SCE&G product or not a SCANA work  
17 product. But it appears that what Santee is doing  
18 is they're estimating on a 100 percent basis what  
19 the increases are going to be, what the impact of  
20 escalation is going to be, how much more in  
21 owners' costs are going to be, coming up with a  
22 total, subtracting their assumption for liquidated  
23 damages and then netting it to the \$257 million  
24 and then ratioing 55/45. That's what it appears  
25 to be looking at.

1 Q And do you think at that time in this timeframe  
2 that was a reasonable estimate?

3 A I don't know at what point in time SCE&G's new  
4 nuclear team could come up with an estimate, so I  
5 don't know if this is accurate. I wouldn't say it  
6 would be far off from SCE&G's estimate, but I  
7 don't know if SCE&G had run their numbers and  
8 concluded a number of this point in time.

9 Q Steve, who would have been the person or persons  
10 over the group within E&G that would have sat down  
11 and said, "Gosh, we've got this problem with this  
12 delay or this hiccup, and how much it's going to  
13 cost us?"

14 A There was a financial group dedicated to the  
15 nuclear project that reported up to the CFO. That  
16 financial group would have been responsible for  
17 estimating the cost increases on this project.

18 Q Would you have gotten a report or a note or some  
19 communication that would have given you some  
20 estimated costs to these delays?

21 A Yes, I would have.

22 Q Was that part of the weekly report or that been a  
23 separate report?

24 A No, not part of the weekly report. It would have  
25 been separate.

1 Q A monthly report?

2 A No. For calculating an increase in cost based on  
3 a new forecast from the vendor, that would have  
4 been something specific to that task.

5 Q Okay. So if I were to ask the question of E&G in  
6 a legal paper, what would be the way that I should  
7 word it to get that information? How would you  
8 ask for it?

9 A To get --

10 Q To get the financial estimation of cost or the  
11 increased costs due to contract problems.

12 A I think --

13 Q Does that sound good?

14 A I think the way you just worded would sound good  
15 to me.

16 Q You know, sometimes when lawyers receive that they  
17 say it's not clear. And I just want to make sure  
18 that you and I understood. Okay. So according to  
19 this report, Santee Cooper's estimate of the  
20 cost -- and I understand it's Santee Cooper -- was  
21 in June of '13 an additional \$388 million, not  
22 counting the credits that they were anticipating  
23 or otherwise. Is that correct?

24 A That's what it appears from this paper.

25 Q All right. So let's go to the next, page 11450.

1 Now, this is -- this -- can you tell what that is  
2 by just looking at it? I know it's new to you.

3 A It looks like a cash flow curve to the end of the  
4 project for just Santee Cooper's 45 percent share.  
5 The blue line is what had been -- was actual so  
6 that was known, so that stays. The FNTP is Final  
7 Notice to Proceed. That's the point where the  
8 Final Notice to Proceed notification would be  
9 given to the contractor. And the red looks like  
10 it comes from the -- it says PSC 2012, so I'd have  
11 to make an assumption here that that's what SCE&G  
12 filed with the Public Service Commission in 2012  
13 and Santee is taking a 45 percent ratio of that.

14 Q So let's just assume that the numbers are accurate  
15 and came from the quarterly filings of the PSC.  
16 From 2000 -- well, from 2012 to 2013 there was an  
17 increase of approximately half-a-billion dollars  
18 for Santee Cooper's share. Is that correct? 993  
19 to 1.49?

20 A Yes.

21 Q And so with your 55 thrown in there, we're looking  
22 at over a billion dollars just in one year?

23 A You're talking about spend or you're talking about  
24 increase?

25 Q Increase.

1 A Well, you know, there's forecasted spend that  
2 wouldn't be a change from the plan. It would be  
3 in these numbers. So embedded in these numbers is  
4 not only what they would have expected to have  
5 spent, but also an increase coming from the 388  
6 million probably netted against liquated damages.  
7 But, again, I don't know how they run their  
8 numbers.

9 Q All right. So what would be --

10 A In other words, this is not a chart that is  
11 supposed to demonstrate how much the project has  
12 changed in the cost is -- if there was no change  
13 in cost it would have a similar type curve because  
14 you would expect to spend a certain amount each  
15 year.

16 Q All right. So can this curve tell us what the  
17 increased in cost would be? Or this is just an  
18 increase on how much was spent each year?

19 A Well, the blue line --

20 Q Projected cost.

21 A -- the blue line was actual, so that's how much  
22 was spent by Santee Cooper in those years. So I'd  
23 have to take it on face value that those numbers  
24 are accurate. And it appears that the redline  
25 that what they took was the estimate ratioing

1 SCE&G's number to a Santee Cooper number based on  
2 a filing from the year earlier.

3 Q Okay. I guess the best thing that this graph can  
4 have would be the curve which was projected from  
5 the beginning to see where we are. Wouldn't you  
6 agree with that? It would be a nice line to have  
7 in there?

8 A Sure.

9 Q Okay. So we know that at the end of 2012 Santee  
10 had spent about a billion dollars; E&G had spent  
11 probably a little bit more than that. So you're  
12 looking at about 2 billion at the end of 2012. Is  
13 that in line with what the original projection was  
14 or is that an increase in cash flow?

15 A Again, not the financial report -- my recollection  
16 is that up to that point in time, the project had  
17 underspent the original projection. So not that  
18 that -- it's not to say that there wasn't a  
19 forecast to be an increase. But that some things  
20 were coming back lower than was originally  
21 anticipated such that if you looked at what was  
22 originally projected to be spent at that point in  
23 time or what was actually spent at that point  
24 in time going back to 2012, I believe that the  
25 project was underspent.



1 Q All right.

2

3 MR. BALSER: Two page exhibit?

4 MR. BELL: I'm sorry. let me get to it.

5

6 Q I have one more question, Steve, on that last  
7 series of questions. What was the reason why  
8 Santee had underspent in 2012? Is that because  
9 you hadn't gotten as far as you wanted to go?

10 A Yeah. What I said was my recollection was there  
11 was an underspending. So some things that the  
12 Consortium would not get payments for had they not  
13 met certain milestones, escalation was coming  
14 lower, the cost of borrowing was a little bit  
15 lower. So overall, when you look at the total  
16 cost, it was actually -- it was actually a bit of  
17 an underspent. At some point that changed, but I  
18 think back in 2012 I remember it still underspent.

19 Q Exhibit No. 4 is FOE 0000018 and 0000019. Who is  
20 Ron Lindsay?

21

22 (Whereupon, E-mail Correspondence was  
23 marked Exhibit No. 4 for  
24 identification.)

25

1 A Ron Lindsay was the general counsel for SCANA.

2 Q Okay. And who is Alvis Bynum?

3 A Al Bynum was an internal attorney with SCE&G who  
4 was more or less dedicated to nuclear regs.

5 Q Okay. Who is Steve Pelcher?

6 A Steve Pelcher was an attorney with Santee Cooper.

7 Q Okay. Apparently reading this, looks like Steve  
8 Pelcher forwarded to Alvis Bynum a note from  
9 Carter, Lonnie Carter, to Kevin Marsh. You see  
10 that?

11 A From Belcher to Bynum forwarded, yes.

12 Q Middle of the page there.

13 A Yes.

14 Q And a copy of that is sent to Judge Brogdon -- or  
15 Jim Brogdon?

16 A Yes.

17 Q All right. Lonnie's writing the note. It says,  
18 "Kevin, Thanks. I believe your letter is clear  
19 and expresses the urgency well. I can make all of  
20 the dates you have given them work. Let me know  
21 when we can get together with our teams to  
22 consider our options and chart a course to get  
23 them back on schedule." So he's appreciative of  
24 what Mr. Marsh has done. Is that correct,  
25 apparently?

1 A Sounds like it.

2 Q Okay. The reason I'm kind of going through these  
3 is earlier you had mentioned that Mr. Carter  
4 sometimes wrote his notes to -- I'm trying to  
5 remember the term used, but I didn't think you  
6 used the term histrionic. But what was the --  
7 what were you trying to say about Mr. Carter's  
8 notes?

9 A I think sometimes Mr. Carter would say things for  
10 effect and that it was often times in the vein of  
11 negotiations, typically when the Consortium would  
12 also sometimes with SCE&G, as if, you know, he  
13 would assume that these memos might make their way  
14 to the Consortium and wanted to make him sound  
15 very tough.

16 Q Was he a good negotiator?

17 A I thought Mr. Carter was a pretty good negotiator.

18 Q I've known him a long time. That's the reason I  
19 asked you that. Did y'all ever think about  
20 getting Mr. Carter in there to work with  
21 Westinghouse and . . .

22 A Mr. Carter often was involved in negotiation  
23 sessions with Westinghouse and the Consortium.

24 Q And in some of these meetings -- well, in all of  
25 the meetings I read about they always said "we'll

1 look into it; we'll take care of it," didn't they?

2 A I don't know that I could characterize it that  
3 way.

4 Q They seem to give a -- the Westinghouse and the  
5 Consortium seemed to give a response at least that  
6 answered the present question, didn't it?

7 A Well, I believe the Consortium, and when the  
8 Consortium was dissolved, Westinghouse did believe  
9 that they could impact improvements and did at  
10 least acknowledge the concerns of the owner's and  
11 to try to address the concern of the owner's.

12 Q So this paragraph that Mr. Carter -- I don't know  
13 if this is the first time, but at least in the  
14 second paragraph says, "One thing they brought to  
15 my attention today is that SCANA has outside  
16 counsel with construction litigation experience,"  
17 referring to Smith, Currie and Hancock. "I assume  
18 they would likely represent SCANA and Santee  
19 Cooper in any litigation. If that is the case, I  
20 would recommend we get them involved. We need  
21 their advice before we meet with Roderick and  
22 Asherman." And who is Roderick and Asherman?

23 A Roderick is Danny Roderick who was then CEO of  
24 Westinghouse and Asherman is Phil Asherman, the  
25 CEO of Chicago Bridge & Iron.

1 Q Were there discussions about the possibility of  
2 having to litigate with the Consortium?

3 A There were some discussions involving litigation  
4 with the Consortium, but relatively few of those  
5 discussions involved me. And so the folks that  
6 you mentioned on these memos were really involved  
7 with that, including the Smith, Currie and Hancock  
8 the SCANA legal department would have been working  
9 with.

10 Q And answer this for me: Who is Danny and Phil?

11 A Danny is Danny Roderick, the CEO of  
12 Westinghouse --

13 Q The same ones you told me?

14 A Yes.

15 Q The next page -- and I'll ask you this question:  
16 It looks like you received a copy of this note  
17 from Kevin Marsh?

18 A Uh-huh.

19 Q The last sentence Mr. Marsh says, "I don't have to  
20 remind you that continuing delays and cost  
21 overruns are unacceptable from a public  
22 perspective and could have serious effects. We  
23 need to meet." Did y'all meet about this note  
24 from Mr. Marsh?

25 A You know, I don't specifically remember, but I

1 don't have any reason to doubt that we didn't. It  
2 appears that Mr. Marsh threw out some dates to  
3 those two CEOs and Mr. Carter was basically saying  
4 he can make any of those dates. So I'm sure that  
5 there's a subsequent communications relative to  
6 when they meeting.

7 Q Okay.

8

9 MR. BELL: Off the record.

10 VIDEOGRAPHER: This concludes the ending of  
11 the video deposition of Stephen Byrne. The time  
12 is approximately 2:27 p.m. We are now off the  
13 record.

14

15 (Off The Record)

16

17 VIDEOGRAPHER: We are now back on the record.  
18 The day's date is August 14, 2018. The time is  
19 approximately 2:51 p.m. This is video number  
20 three of the video deposition of Stephen Byrne.

21

22 Q Steve, I have marked Exhibit No. 5 as an  
23 interoffice communication of October 21, 2013, ORS  
24 00065013. Do you have a copy? Do you have the  
25 exhibit?

1 A I have it.

2 Q Okay.

3

4 MR. BALSER: And before we began in  
5 questioning, we had a conversation off the record  
6 about the notations on some of these exhibits that  
7 have red boxes and lines. And I understand that  
8 counsel for the plaintiffs have added those  
9 markings, and we agreed that at some point we will  
10 substitute clean copies of these exhibits. We  
11 have no objection to questioning the witnesses  
12 with these.

13 MR. BELL: There's no objection. All right.

14

15 (Whereupon, E-mail Correspondence was  
16 marked Exhibit No. 5 for  
17 identification.)

18

19 Q Do you remember seeing this at the time? Or it  
20 doesn't look like you were on the circulation  
21 list, but --

22 A I don't recall seeing this.

23 Q Okay. Have you seen it before?

24 A I don't recall ever seeing this.

25 Q You want to take a minute and kind of read it in

1 detail or skim it, either way you'd like?

2 A All right.

3 Q I'm not going to go through every part of it.

4 A (Witness complies.) Okay.

5 Q This is a memo, interoffice communication memo,  
6 from the president of Santee Cooper, Lonnie  
7 Carter, to Steve Pelcher and James Brogdon,  
8 according to the heading. Is that correct?

9 A That's correct.

10 Q And this appears to be a memorandum after a  
11 meeting that Mr. Marsh, the president of SCANA,  
12 and E&G and Mr. Carter had with the Consortium  
13 presence. Is that correct?

14 A The Consortium and Toshiba it looks like.

15 Q Okay, very well. So you were not at this meeting,  
16 I assume?

17 A It does not appear that I was at this meeting.

18 Q Okay. But if this recollection of Mr. Carter is  
19 accurate -- I'm setting that as an if -- then it  
20 would appear that Mr. Carter is expressing a lot  
21 of reservations about what's gone on and what  
22 might happen in the future. Would you agree that?

23

24 MR. BALSER: Objection. Lack of foundation.

25



1 Q You've read the memo, haven't you?

2 A I've read through this memo and I think it's clear  
3 at this point in time -- this is back in 2013 --  
4 that the owners were not satisfied with the level  
5 of progress specifically at that Lake Charles  
6 facility. CB&I, as the new owners of that Lake  
7 Charles facility, had given the project owners a  
8 new schedule based on module deliveries. Some of  
9 those module deliveries were not meeting their own  
10 schedule. And this appears that Mr. Carter and  
11 Mr. Marsh were voicing their concerns and  
12 frustrations over some of those scheduled  
13 activities and their lack of delivery modules to  
14 the Consortium and to Toshiba.

15 Q In fact, on the first page Mr. Carter says, "Their  
16 failure to provide modules" -- I'm at the last  
17 paragraph.

18 A Last paragraph, okay.

19 Q -- "failure to provide modules on a timely manner  
20 is now having a critical impact on the project,  
21 and if not addressed immediately could mean that  
22 our organization would be forced to take drastic  
23 action." Do you see that?

24 A I see that.

25 Q And then the next sentence says he says,

1 "Kevin," -- I assume he's talking about Kevin  
2 Marsh -- "and I went on to note we have reached so  
3 many new schedules -- we have received so many new  
4 schedules that they are meaningless." Do you see  
5 that?

6 A I see that.

7 Q All right. Now, this was not a communication from  
8 Lonnie Carter to -- it was to their internal  
9 organization, wasn't it?

10 A That's what it appears.

11 Q All right. So he wasn't negotiating or wasn't  
12 puffing or wasn't kind of doing all the things in  
13 these other letters you mentioned. He was talking  
14 to his own group, right?

15 A That's what it appears.

16 Q Okay. He also indicated that at this meeting  
17 there was a number of discussion and points made  
18 that these delays and the problems they were  
19 having could affect their bondholders, their  
20 investors, their banks, their financial market, if  
21 you will. Do see all the references in there?

22 A I certainly see the references to bond offerings  
23 and, in fact, I think it indicated Santee Cooper  
24 was preparing to go out in the market for the bond  
25 offering.

1 Q It mentions somewhere about E&G having to go in  
2 the financial market --

3 A Would likely be in the market.

4 Q That's right. So I assume Steve -- and you were  
5 not in the financial area, were you?

6 A No.

7 Q Okay. But you were kind of the spokesman for  
8 Santee in a lot of the financial meetings and the  
9 investor meetings, things like that?

10 A I wasn't a spokesman for Santee at all.

11 Q I apologize. You were the spokesman for E&G?

12 A Correct.

13 Q And did you -- was Santee at those meetings or  
14 just E&G? These were to your investors.

15 A To the investor meetings that SCANA would have had  
16 would not have involved Santee Cooper.

17 Q Okay. So you were the spokesman for SCANA and E&G  
18 at these investor meetings?

19 A I was one of the spokesman for SCANA and SCE&G,  
20 yes.

21 Q Okay. Were you the highest ranking executive at  
22 those meetings?

23 A Our chief financial officer was generally in those  
24 meetings. So he was at the same level as was I.

25 Q Okay.

1 A And occasionally our CEO was in those meetings, so  
2 he would -- obviously, he's higher.

3 Q Did most -- were most of those meetings in person  
4 or did a lot of them occur on the phone?

5 A It would depend on the meeting. The company had  
6 quarterly analyst calls, earnings calls. Those  
7 were on the phone. The company, for a period of  
8 time, had annual analyst meetings in New York.  
9 And the June 5th reference that you've seen in  
10 some of these documents was one of those  
11 face-to-face in New York webcast meetings. The  
12 company did have one or two -- I think it was  
13 two -- of those annual analyst meetings at the  
14 project site in Jenkinsville. And then there were  
15 what are colloquially termed "one-on-one sessions"  
16 with investors generally around financial  
17 conferences where representatives from the company  
18 will speak to analysts. They called them  
19 "one-on-one" but it's generally three to five  
20 people from the company and one to 12 analysts.

21 Q Would you normally have a statement or was it  
22 usually oral presentation?

23 A The earnings calls had a script that was read and  
24 then there was a Q&A session. The --

25 Q And do you -- I'm sorry.

1 A The analysts meetings in New York generally were  
2 speaking from slides on PowerPoint presentations.  
3 The meetings -- the one-on-one sessions that were  
4 generally in New York, but could be in other  
5 cities, would have a book of slides that the of  
6 analysts would have their choices to whether  
7 they'd use those or didn't use those, whether we  
8 answered questions on the slides or whether they  
9 just asked questions and we answered questions.

10 Q So you kind of pass out a presentation and let --  
11 for them to ask questions?

12 A That's correct.

13 Q Are you -- do you remember ever hearing or  
14 speaking to any analyst or any -- meaning any of  
15 these investor meetings that E&G and SCANA had  
16 grave concerns over whether or not these companies  
17 can produce as a key promise?

18 A Well, first of all, I would not have used the term  
19 "grave" because I didn't believe that that was the  
20 case. So when you're asking me what I would have  
21 said, the company and I did make analysts aware of  
22 the fact that we had delays and that the module  
23 facility in Lake Charles was problematic.

24 Q Okay. And would that be in some of the slides  
25 you'd have or some of the statements?

1 A It would be in all of them, yes.

2 Q Okay. And so --

3 A It's also in testimony before the Public Service  
4 Commission. It's also in the quarterly BLRA  
5 reports that the company produced.

6 Q Okay. When these delays occurred and it cost E&G  
7 money, that increase in cost would be passed on to  
8 the customers. Is that correct? Pursuant to the  
9 BLRA?

10 A Yeah. If you were going to be outside of the  
11 approval for BLRA for either cost or schedule,  
12 then the company would have to go back to the  
13 Public Service Commission to request a new  
14 schedule and a new cost call schedule -- a new  
15 construction schedule and a new cost schedule.

16 Q In order to get a cost increase, you had to also  
17 pre that request have a schedule change?

18 A In order to get a new cost --

19 Q Yeah, and --

20 A I'm not sure I'm following you there.

21 Q I'll take that.

22 A Okay.

23 Q You were not allowed to get an increase in the  
24 rate to the customer unless you were within your  
25 schedule. Is that correct?

1     A     There was not a specific time between cost and  
2           schedule before the Public Service Commission. So  
3           the company could have asked for a change to  
4           either one without a change in the other. The  
5           Baseload Review Act called for a contingency  
6           period around the schedule of plus 24 months or  
7           minus 18 months. Plus would mean your accelerated  
8           months. So focusing on the minus 18 months, which  
9           means a delay, whatever schedule was approved by  
10          the Public Service Commission, each of the  
11          milestones would have an 18-month leeway to be  
12          delayed. So you were still within the confines of  
13          the BLRA schedule approval as long as you were  
14          within 18 months of the last approval.

15     Q     I guess one day I'll ask Mr. Carter this question.  
16           But did you -- since he's kind of repeating what  
17           he remembered at this meeting, the request to the  
18           Consortium to obtain new schedules was tied into  
19           this complaint that Santee was having with their  
20           potential meetings with their bondholders, the  
21           financial market. When you were telling these  
22           folks there were delays, did you give them the raw  
23           language of what was going on, that this was a  
24           huge problem, there were potential questions about  
25           whether the project was viable or not? Or were

1           you just saying, well, we've had expected delays  
2           and don't worry about it we -- and on and on? Was  
3           it soft-shoed or was it told just flat-out giving  
4           them the straight and narrow?

5  
6           MR. BALSER: Object to the prefatory remarks  
7           before the question and object to the question as  
8           compound.

9  
10       Q     Go ahead.

11       A     Let me start off -- you started off saying Santee  
12           Cooper and their bond offerings. I was not  
13           involved with Santee Cooper or their bond  
14           offerings and I really don't know anything about  
15           them. I don't know what language Santee Cooper  
16           used in their bond offerings. You also said that  
17           the -- something along the lines the project  
18           couldn't be completed, and that was never the  
19           case. The project was always going to be viable.  
20           And I think you used the term "not viable." The  
21           project was viable. It was really just a matter  
22           of cost and schedule, but the project was viable.  
23           So in the disclosures that SCE&G made to the  
24           financial community and the Public Service  
25           Commission, the company did make those entities



1       aware of the fact that there were ongoing problems  
2       at the Lake Charles facility with regard to  
3       module -- submodule deliveries, and made those  
4       statements over multiple periods.

5     Q   Those would be included in the ones you mentioned  
6       earlier?

7     A   They would be.

8     Q   Okay. And that was the extent of the explanation  
9       given in regards to the delays in respect to the  
10      modules?

11    A   Without having them in front of me, I don't  
12       remember exactly what was said. There may have  
13       been a little bit more explanation.

14    Q   Okay. Who is Richard Lorenzo?

15    A   Mr. Lorenzo was, I believe, an external attorney  
16       that Santee Cooper used.

17    Q   On the last page, Mr. Carter indicates, "I remain  
18       skeptical as to whether the information provided  
19       by the Consortium can be relied upon. We made  
20       clear, Kevin and I, that we would monitor their  
21       progress weekly and would take whatever actions  
22       were necessary to protect our organizations and or  
23       customers." Did I read it correctly?

24    A   You certainly seemed to have read it correctly.

25    Q   All right. I've marked Exhibit No. 6 which is a

1 joint letter from Santee and SCANA dated May 6,  
2 2014. SCANA Bates RP 0304602.

3

4 (Whereupon, Letter was marked Exhibit  
5 No. 6 for identification.)

6

7 Q Have you read this letter before?

8 A I have.

9 Q Okay.

10 A When's the last time I read it? I don't remember  
11 when the last time. I certainly read it in 2014.

12 Q Way back then, okay. Is this is a fairly accurate  
13 historical rendition of what had happened?

14 A I think the facts contained in here were fairly  
15 accurate.

16 Q Okay.

17 A This was a letter that was written to Phil  
18 Asherman and Danny Roderick and sent to Toshiba.  
19 And so the real audience of the memo was Toshiba.

20 Q Okay.

21 A This was sent in advance of a visit that the two  
22 companies made to Tokyo to visit with Toshiba. So  
23 this was intended to lay out for Toshiba all of  
24 the issues that the companies thought were  
25 involved with the projects to try to solicit some

1 support from Toshiba or draw Toshiba in to assist.  
2 Toshiba professed to have some skills, abilities,  
3 knowledge that would be helpful in construction.  
4 And the owners hadn't seen much of that to date  
5 and wanted to get Toshiba's commitment towards  
6 helping CB&I and their company, their subsidiary  
7 Westinghouse, in the construction of these units.

8 Q Go to page 7. The page is listed up top. We  
9 talked a minute ago about E&G's public disclosure.  
10 And you mentioned that some of this had been  
11 disclosed. Under letter D it says, "On June 5,  
12 2013, SCE&G publicly disclosed your statement to  
13 us that you would not be able to meet the required  
14 completion dates in the 2012 Agreement." Would  
15 that have been the first time that disclosure was  
16 made or was it -- had it been made earlier than  
17 that?

18 A The disclosure you're talking about is the delay  
19 that's highlighted in this paragraph?

20 Q Where it says, "not being able to meet the  
21 required completion date in the 2012 Agreement."  
22 Had there been any prior statements that the  
23 completion date was not going to be met?

24 A So you're talking about prior to June 5th?

25 Q Yes, sir.

1 A I don't believe so.

2 Q Okay. So we can then take June 5th as kind of the  
3 date that you were first told that the completion  
4 date may not be obtainable?

5 A That was the first day that SCANA announced it  
6 publicly. I think we got the schedule a couple of  
7 days ahead of that.

8 Q Okay. And you would have gotten that from the  
9 Consortium?

10 A From the Consortium.

11 Q Would that have been Westinghouse?

12 A That would have come from Westinghouse and Chicago  
13 Bridge & Iron.

14 Q And how far down the road did they extend or  
15 propose the completion date would be extended?

16 A I think that it is the fourth quarter of 2017 or  
17 the first quarter of 2018 for Unit 2.

18 Q All right. And a similar delay for Unit 3?

19 A That's correct.

20 Q But in June of 2013, in addition to the module  
21 unit delays, there were other problems that had  
22 not been resolved. Is that correct?

23 A Again, on a megaproject like this there are always  
24 going to be problems and issues. I think at this  
25 point in time the only significant issue, at least

1           that we're aware of at that point in time, was the  
2           module delivery schedule. So there had been some  
3           previous issues getting licensed, for example.  
4           But at this point in time the license had been  
5           issued.

6    Q       So in June of '13, your main concern at that time  
7           was your delay at delivery?

8    A       The main concern was the module delivery schedule.

9    Q       What is the 47 CA-01 submodules?

10   A       Where are you? What page number?

11   Q       I'm sorry. Page 10.

12   A       Ten?

13   Q       Under the letter H, the last paragraph.

14   A       Last paragraph under hotel? The CA-01 is one of  
15           the big six structural modules and CA-01 is  
16           comprised of 47 submodules.

17   Q       So none of those had been delivered by that time?

18   A       That's correct.

19   Q       Were y'all becoming further concerned that the  
20           date of completion would be extended?

21   A       I think there was always a concern for schedule.  
22           The module delivery schedule certainly had a  
23           potential impact. When asked directly, the  
24           contractor would say that they believed that the  
25           scheduled dates were attainable and they were

1 working on mitigation activities with submodules.

2 Q On page 11, what is IFC?

3 A IFC is Issued For Construction.

4 Q So these are your design drawings?

5 A These would be design drawings that would be  
6 issued to the project site for construction.

7 Q You started the project in 2009?

8 A Yeah. The construction module started in 2009.

9 Q The second paragraph I thought was curious and I'd  
10 like for you to comment on it. I'll read it.

11 "The Consortium's early reports of design progress  
12 were optimistic. For example, in the March 17,  
13 2011 Monthly Project Review Minutes, the  
14 Consortium reported that it had delivered 90.49  
15 percent of the scheduled IFC documents. As a  
16 result, the Consortium stated, 'Design  
17 finalization is coming to an end and transitioning  
18 to support certified for construction design.'"  
19 Are we talking about all of the design documents  
20 they indicated in March 2011, they were 90 percent  
21 complete, 90.49?

22 A Yes. The Consortium had indicated that the  
23 design -- that the issue for construction design  
24 documents were that far along.

25 Q And as you read further in these paragraphs, the

1 letter indicates that you kept getting increased  
2 percentage of completion of the IFC designs?

3 A The Consortium would report out monthly on what  
4 their status was on the issue with construction,  
5 yes.

6 Q Did you find at a later time that these  
7 representations were inaccurate?

8 A Yeah. The Consortium reported to us that their  
9 representations were inaccurate.

10 Q When did you find out they were inaccurate?  
11 Before or after they told you?

12 A When they told us.

13 Q So when they were telling it's 90 percent  
14 complete, yet they can't do some work on the  
15 building because they don't have design drawings,  
16 I don't understand why you wouldn't have gotten  
17 some clue that you weren't getting accurate  
18 information.

19 A That's not a question. What's the question?

20 Q All right. Can you tell me why you didn't have a  
21 clue that you weren't getting accurate information  
22 on the completion of these drawings?

23 A Well, I didn't say that we didn't have a clue.  
24 What I said was that Westinghouse reported to us,  
25 the owners, that their previous estimate

1           for percent of documents that were ready for the  
2           issue for construction was inaccurate. They had  
3           some reasons for those. But I don't recall in the  
4           2013 time frame going to work on a building, as  
5           you suggest, and it not being -- the design not  
6           being ready to support the building.

7    Q     Have you seen some of your internal documents?  
8           And -- have another group that talks about the  
9           number of design documents that weren't completed?

10   A     Have I seen them?

11   Q     Have you seen these? Y'all have these internal  
12           documents that talk about -- have you seen some  
13           that say that, that talk about it?

14   A     I'd have to see what documents you're talking  
15           about to make a comment.

16   Q     Did your group keep track of the final documents  
17           that were completed?

18   A     The new nuclear construction group, particularly  
19           the engineering department, did track engineering  
20           completion and certainly did look at these  
21           documents. That's not to say that that team may  
22           not have raised a concern to Westinghouse over the  
23           status of the documents. I just know that much  
24           about it.

25   Q     Would that have been something that would have



1       been reported to your or someone else or -- I  
2       guess I'm curious because if you read through and  
3       kind of the gist of all of this is that  
4       Westinghouse was not giving you an accurate report  
5       on how complete they were with the design  
6       documents. E&G was out there trying to figure out  
7       why everything is getting delayed and later on  
8       everybody finds out these documents are completed.

9  
10           MR. BALSER: Objection to the prefatory  
11       remarks.

12  
13   Q     That's a good overview, isn't it?

14   A     No, I don't think that is a good overview. I  
15       think your question really presumes that the  
16       change in percent complete for the IFC documents  
17       was a cause for the delays. I don't know that to  
18       be the case. Again, at this point in time, the  
19       primary cause of the delays -- again, there were  
20       some delays that had been in the past over the  
21       licensing delay -- delay in issuing the license,  
22       that was in the past. There was some design  
23       issues with the basemat pour. That had already  
24       been poured at this point in time. So those kind  
25       of issues were behind. So in the forefront, at

1           this point in time, not to say there weren't other  
2           problems, but in the forefront there was this  
3           submodule delivery schedule issue.

4    Q       So as I'm hearing what you're saying, Steve, is  
5           that while at some point there were issues with  
6           the design drawings, that wasn't a major problem  
7           in 2013?

8    A       In 2013, that was not a major problem.

9    Q       Did it become a major problem?

10   A       Design issues certainly become a major problem.  
11           I'm not sure whether the issue for design or the  
12           issue for construction, design diagrams were a big  
13           part of that problem or not. And the design  
14           issues at sub-vendors. And certainly places like  
15           Lake Charles would be a sub-vendor. Those would  
16           not be reported in the IFC completion percentage  
17           numbers. So those were not issued for  
18           construction. That was something that was handled  
19           at a sub-vendor off site; not on-site construction  
20           issues with construction vendors.

21   Q       What is WEC Design?

22   A       WEC was their terminology for Westinghouse.

23   Q       Okay.

24   A       I think it's Westinghouse Electric Company.

25   Q       So on the paragraph C on page 12, this letter

1 outlined some of the design issues and the impact  
2 it had on delays. Is that correct?

3 A That's correct.

4 Q And are these current in 2013 he's talking about  
5 or things that happened in the past?

6 A Well, this is 2014, this letter.

7 Q I'm sorry.

8 A And so some of these would have been historical  
9 representations of issues such that Toshiba was  
10 well aware of them. Again, you know, the letter  
11 was written to the Consortium which is who the  
12 contract was with. Westinghouse would have been  
13 painfully aware of all of these issues. So the  
14 audience for these was really Westinghouse. LARs,  
15 the License Amendment Request, if you remember  
16 when I was talking about the Part 52 issues and if  
17 things don't line up we might have to change the  
18 license. Well, LAR is the way that the license is  
19 formally changed with the regulator. And so the  
20 point here is that changes to the design were  
21 forcing the project to do more changes to the  
22 license. So once the license is issued by the  
23 Nuclear Regulatory Commission, that's in custody  
24 of what they call the licensee, which would have  
25 been SCE&G. So SCE&G is the ones that now have to

1 change the license if a design change forces the  
2 change in the license.

3 Q Okay. So whether we talk about a final design  
4 versus a design change, design changes were giving  
5 you a lot of problems, right?

6 A Design changes were causing some problems on the  
7 site, yes.

8 Q And design changes were because of what? Why were  
9 they having those changes?

10 A There wasn't any one issue. The design changes  
11 were coming from a number of things. One, as  
12 Westinghouse would finalize things with the  
13 Nuclear Regulatory Commission, they saw a lot of  
14 turnover at the Commission with people who would  
15 proof the design up front. And while they thought  
16 they had an agreement, an agreement with a new  
17 person didn't seem to hold, so there were  
18 necessitated changes to the design. There was an  
19 issue with the shield building and aircraft  
20 impact, and Westinghouse had to do a lot of  
21 changes to the design of the shield building, much  
22 beyond what they anticipated doing. There were  
23 changes that were coming from the projects being  
24 constructed in China that were ahead of the US  
25 projects. There were things that the US projects

1       were learning. So if you find out you can't buy  
2       certain material that may have been spec'd, then  
3       they would have to change the material spec, that  
4       could require a license change. So there were a  
5       variety of reasons for the changes to the license  
6       and the design causing these kinds of design  
7       problems because of the new construction regiment  
8       under the 10CFR Part 52.

9       Q     What is a departure?

10      A     A departure is a way to change a part of the  
11       design that doesn't require NRC approval. So the  
12       significance of changes was kind of tiered. If it  
13       met a certain tier, you'd have to go to the NRC  
14       before you could implement that change. But there  
15       was a lower tier, some things that weren't really  
16       described in detail in the design that you could  
17       change with the departure.

18      Q     In the bottom of page 12, this letter states "In  
19       addition to the LARs, the Consortium has also had  
20       a large number of departures. The April 17, 2014,  
21       project status report states that 595 departures  
22       have been identified. That's a lot, isn't it?

23      A     It seemed like a lot, but in reality that was a  
24       fairly manageable number.

25      Q     Well, but you indicated this had the potential for

1 impacting the project's schedule.

2 A Yeah. So any departure, any license change would  
3 have a potential to impact.

4 Q "Of these 237 are in progress," -- are in process,  
5 excuse me -- "and 358 are in the queue. These  
6 departures do not require NRC review but have the  
7 potential for impacting the project schedule due  
8 to Westinghouse design changes." So this letter  
9 is basically laying out a list of issues, a list  
10 of the problems. And, with all due respect to  
11 your testimony, are you trying to minimize these  
12 now?

13 A No. I'm not trying to minimize them. They are  
14 what they are.

15 Q But when I ask you about them, each one is like,  
16 well, it's not -- it's almost making me feel like  
17 these aren't really bad; these are okay.

18

19 MR. BALSER: Objection. Argumentative.

20

21 Q Is that what you're trying to do or --

22 A No. That's certainly not what I'm trying to do.

23 Q I mean, these are --

24 A I was trying to add some context to the letter.

25 Q Okay.

1     A     And I wanted to try to understand that even though  
2           this was letter that was sent to CEOs of the  
3           Consortium members that the owners really had a  
4           different audience in mind for the letter. So it  
5           was going to recant things that the Consortium  
6           would have been well familiar with and that there  
7           would have been other documentation to back up  
8           those issues. I don't want to try to minimize all  
9           the issues, but certainly there were delays going  
10          on in the project and certainly the owners wanted  
11          the Consortium to start performing and certainly  
12          they wanted the parent company, Toshiba, who had  
13          advertised some of their own skills in the nuclear  
14          construction, to get more involved. And this  
15          letter was followed up by a visit by the  
16          executives to Toshiba in Tokyo to solicit their  
17          support.

18     Q     When you look at the -- I'm not sure sometimes  
19           when I read it. When you look at your testimony  
20           before the PSC, some says it's submitted or, you  
21           know, kind of prepared in advance, and some, I  
22           guess, you're sitting there and answering  
23           questions. I don't get the -- excuse me -- I got  
24           the -- and I'm going to give you this preliminary,  
25           and I know I'll get an objection. I got the same

1 feeling reading that testimony that I'm getting  
2 today, that it's almost minimized for the audience  
3 instead of what it actually says in the letter.  
4 So my question to you is was that intentional that  
5 the impact of these was trying to be minimized or  
6 was that really given in the raw state like I just  
7 read in the letter?

8  
9 MR. BALSER: Object to the prefatory remarks.  
10 Object to the characterization of the witness'  
11 prior testimony from the PSC.

12  
13 A You had asked me to explain individual aspects.  
14 Certainly the others were concerned, concerned  
15 enough to write the letter and concerned enough to  
16 make the visit to Japan. So the issues were real  
17 issues; some of them are historical. So -- but I  
18 was trying to put some context around the letter.

19 Q On page 13 of the Roman paragraph V, it says "Our  
20 frustration continues to mount." Did you at any  
21 time ever tell the PSA that your company's  
22 frustration continued to mount in this project?

23 A Certainly company witnesses before the PSC did  
24 discuss the fact that the required improvements  
25 were not taking place; that the promised



1 improvements were not taking place, but while,  
2 perhaps, did not use the term "frustration  
3 continues to mount" the gist of that was in that  
4 testimony.

5 Q Did you ever tell the PSC or an investor meeting  
6 that Westinghouse and the Consortium has made  
7 promise after promise but fulfilled few of them?

8 A That specific language, no. But we certainly made  
9 the PSC and the investor community aware of  
10 problems and delays and cost increases for the  
11 project.

12 Q Did you ever say to the PSC or to the investor  
13 meetings that the delays that you were referring  
14 to were solely the Consortium's fault?

15 A Did we ever say that the delays were solely the  
16 Consortium's fault? When the company discussed  
17 the delays, they discussed who would be  
18 responsible for the delays. Some of the delays,  
19 for example, the delay in receiving the license,  
20 some of that delay was on the Nuclear Regulatory  
21 Commission. And I believe if you look at what we  
22 discussed, you would've pointed that out, where  
23 delays came from modules, submodule delivery. We  
24 called out who was responsible for that. So --

25 Q What was the 2012 agreement? Remind me.

1     A     There was an agreement with -- at the time it was  
2           Shaw -- with Shaw and Westinghouse that was all  
3           for kind of big picture commercial issues, one of  
4           which was the delay in receiving a license. So it  
5           accounted for that eleven month delay. So if, you  
6           know, the Consortium did not want to be held  
7           responsible from a liquidated damages perspective  
8           for the Nuclear Regulatory Commission not issuing  
9           the license in time. So there was a negotiation  
10          about additional costs. For example, there was a  
11          valley in the rock below Unit 2. Ours is a hard  
12          rock site, but they mapped the site to the extent  
13          that they could, but between some of the moorings  
14          there was a big depression in the rock which meant  
15          it had to be filled in. So that was additional  
16          cost, so that was a change order that was  
17          negotiated in with this. The delay in receiving  
18          the license was a change that was negotiated into  
19          that 2012 agreement. So out of that 2012  
20          agreement did come some new guarantee completion  
21          dates, which I think you saw and referred to  
22          earlier in this document. But that was an  
23          agreement that was inked in I think early 2012,  
24          but actually finalized by July of 2012.

25     Q     Okay. So this letter indicates that the delays

1           since the 2012 agreement had been solely the  
2           Consortium's fault. Do you agree with that?

3    A       Where are you reading from?

4    Q       The first -- the second paragraph under V?

5    A       I would have to say that since that agreement they  
6           were all or mostly the Consortium's fault.

7    Q       Okay. Let's go to the -- two paragraphs down. It  
8           says -- it estimated that additional cost of \$150  
9           million and a 100 million in liquidated damages.  
10           And then the letter say,s, "We are in the process  
11           of investigating other additional costs we're  
12           incurring due to the unexcused delays or  
13           associated changes to your work plan. We will  
14           advise you of their categories and amounts once we  
15           have completed our investigation." Who was in  
16           charge of that investigation?

17   A       I don't remember a specific individual, but it  
18           would have been a combined effort between the new  
19           nuclear construction group and the financial  
20           group. So there would have been a delay in the  
21           associated cost. The delay would have to be  
22           identified and associated cost would have to be  
23           identified. So it would have to be a  
24           collaborative effort between those two groups.  
25           And these were things like additional storage

1           because of the delay. The Consortium started to  
2           use a lot of tents to store things and the owner  
3           started to build a lot of -- we received a lot of  
4           invoices for tents, which are more expensive than  
5           you might think. So the owner started to reject  
6           some of those invoices for tents.

7    Q       So was there a report issued after the  
8           investigation was completed?

9    A       I don't recall.

10   Q       If there was, would you have been given a copy of  
11           it?

12   A       That would be likely.

13   Q       And, again, if I were wanting to find that report  
14           or if you wanted to find it, how would you ask for  
15           it?

16   A       Well, I would likely go to -- well, the person I  
17           would go to would be Alan Torres probably, but to  
18           try to find that now, Alan doesn't currently work  
19           there. He knew, and I would have asked about it  
20           if he still was working with the company.

21   Q       Right. Exhibit No. 7 is SCANA Bates number  
22           RP0465823. Again, the red boxes are self-entered  
23           and we will clean them up at a later time, if  
24           requested.

25

1 (Whereupon, SCANA Release Document was  
2 marked Exhibit No. 7 for  
3 identification.)  
4

5 Q You're familiar with this?

6 A I am.

7 Q Document?

8 A Uh-huh.

9 Q Rhonda O'Banion and Christina Putman, they work in  
10 media and investor contact?

11 A Yes. Rhonda O'Banion works for SCANA in media  
12 relations and Christina Putman, at the time,  
13 worked for SCANA in investor relations.

14 Q Is she still there?

15 A I think she's still with the company. I don't  
16 think she's still with investor relations.

17 Q Okay. This is a press release?

18 A It is.

19 Q The first paragraph basically says that something  
20 was "completed on November 4, 2013. Placement of  
21 the nuclear island basemat for the VC Summer  
22 Unit 3 in Fairfield County. This major milestone  
23 comes just seven months after SCE&G poured the  
24 first new construction nuclear concrete in the US  
25 in three decades for its Unit 2 nuclear island."

1           So that was the introduction. Was that an  
2           important milestone?

3    A     It was.

4    Q     And what is that nuclear island basemat?

5    A     The basemat for the nuclear island is the concrete  
6           foundation that everything that's nuclear  
7           associated with the plant will sit upon.

8    Q     Is that the base --

9    A     It's the basemat; it's the foundation.

10   Q     Is that six-foot thick?

11   A     That's correct.

12   Q     Did it have a lot of rebar in it?

13   A     Had a lot of rebar.

14   Q     Since you're a little bit familiar with it, I  
15           guess you watched some of it get poured?

16   A     I watched what?

17   Q     Did you watch some of it get poured?

18   A     No, I did not.

19   Q     How large of a footprint is that?

20   A     It was about 7,000 cubic yards. I would be  
21           surprised if they didn't put the footprint in  
22           here. So 32,000 square feet.

23   Q     Eighty times 40? Forty times -- 80 times 40 sound  
24           about right? It might not be that exact  
25           dimension, but --

1 A Yes. Yes.

2 Q All right. And six feet deep?

3 A Yeah.

4 Q So read, please, if you don't mind, the first  
5 paragraph that's in red. It starts off "We are  
6 again proud."

7 A "We are again proud to have accomplished such a  
8 significant milestone as our nuclear project  
9 progresses, said Kevin Marsh, chairman and CEO of  
10 SCANA. This is another example of our outstanding  
11 collaboration with Santee Cooper, CB&I,  
12 Westinghouse Electric Company and the many other  
13 stakeholders who play a role in providing South  
14 Carolina with the best solution for meeting the  
15 long-term for clean, safe and reliable power."

16 Q The next paragraph, if you don't mind reading  
17 that, please.

18 A "This successful basemat is a testament to the  
19 hard work by all involved, said Lonnie Carter,  
20 president and CEO of Santee Cooper. We have come  
21 a long way since getting our combined construction  
22 and operating licenses in March 2012, and this  
23 milestone gets us one step closer to the finish  
24 line and the many benefits these units will  
25 provide for state."

1 Q This was issued on November 3 -- 4, 2013. Is that  
2 correct?

3 A That's correct.

4 Q A couple months after the round-up letter of  
5 May 6, 2014. Is that right? In all these meetings  
6 we've been talking about?

7 A The round-up letter was in 2014.

8 Q I'm sorry. So this was prior to the round-up  
9 letter?

10 A That's correct.

11 Q I recognize the round-up letter is in 2014, but it  
12 does look back in history about what was going on,  
13 doesn't it?

14 A It does do some backward looking.

15 Q In fact, most of it is backward, isn't it? We  
16 talked about the 2013 time frame, didn't we? Are  
17 we talking about the 2013 time frame in the  
18 round-up letter?

19 A I don't remember what we discussed, but I think  
20 there were references to 2013 in the round-up  
21 letter, if that's what you're asking.

22 Q And then we talked about the letter from -- the  
23 joint letter from Santee Cooper and SCANA which  
24 was the May 14 letter. So if I were someone  
25 reading this and I'm a customer of E&G, it would



1 sound like everything was going fine, wouldn't it?

2

3 MR. BALSER: Objection. Calls for  
4 speculation.

5

6 Q You know what that word "fine" means? That's a  
7 Sumter, South Carolina term.

8 A (Response.)

9 Q So you're from Mount Pleasant and not too far from  
10 Sumter.

11 A Originally from West Hartlepool, England, which  
12 is --

13 Q Where is that?

14 A West Hartlepool, England, which is a long way from  
15 Sumter. However --

16 Q What would y'all use instead of fine? Do you have  
17 a term that you might use?

18 A We'd probably say it was bloody good.

19 Q Bloody good, okay.

20 A This is a press release which is advertising an  
21 accomplishment. And key to this is that the  
22 qualification for production tax credits actually  
23 had three gates that you had to clear. The one  
24 that we've been talking about is qualifying for  
25 production tax credits has been the last gate, but

1       there were two prior gates. One was you had to  
2       apply for a license by a certain time frame, and  
3       the second was you had to pour -- concrete by a  
4       certain time frame. So this qualified the -- both  
5       units now --

6   Q   You --

7   A   It made that second gate for production tax  
8       credits.

9   Q   Okay. I think the part that gives me some concern  
10       is the quote by Kevin Marsh, and I understand how  
11       press releases are done. Every now and then I see  
12       a quotes sometimes that I'm sure I made. I see  
13       that Mr. Marsh says, "This is another example of  
14       our outstanding collaboration with Santee Cooper,  
15       CB&I, Westinghouse and many other stakeholders who  
16       played a role," et cetera. If I were Toshiba, I  
17       would probably like to see this document compared  
18       to the stinging documents I had just gotten or  
19       were going to get. Did E&G ever have a press  
20       gathering and say, look, we're just catching the  
21       booger out there. This is tough. This is costing  
22       us a lot, lot more than we thought and we're not  
23       sure this project's going to make it?

24

25       MR. BALSER: Object to the form.

1

2 Q Did y'all ever do that, a press briefing or  
3 anything?

4 A First off, the company was never of the opinion  
5 that this project wasn't going to make it.

6 Q Well, then let me rephrase my question. When I  
7 use the term "not going to make it," do you  
8 remember we talked about earlier "in the money?"  
9 If this project ever got out of the money, would  
10 y'all continue it anyway?

11 A Well, I'm not sure -- again, I'm not sure what you  
12 mean by "out of the money." But there was an  
13 evaluation done in 2017 by SCE&G relative to what  
14 it was going to cost to finish the project without  
15 Westinghouse's involvement as the EPC contract.  
16 And that evaluation, it said the plans couldn't be  
17 done, but it was this is the new schedule and this  
18 is the cost, associated costs. And that  
19 associated cost was viewed by the company as to  
20 high --

21 Q Prohibitive?

22 A Right.

23 Q Do you remember who did the cost analysis? Was  
24 that internal?

25 A It was internal.

1 Q Steve, let me ask you a tough question. When was  
2 that -- ask you a tough question. When was that  
3 analysis done?

4 A That analysis was done at about -- it started  
5 about the time of the Westinghouse bankruptcy and  
6 concluded in July '17.

7 Q March 17 and July?

8 A Correct.

9 Q So E&G had the ability to do the proper financial  
10 analysis for the project at any time it wanted to,  
11 didn't it?

12 A No. The bankruptcy gave to the owners some  
13 information that it did not previously have. So  
14 the Westinghouse became very open with information  
15 when the bankruptcy happened. So there was  
16 information that the company did not have  
17 previously that it did have to do its own estimate  
18 with.

19 Q But you had the ability, if you wanted to, to  
20 obtain outside experts along with your internal  
21 people to sit there in 2013 and '14 and say where  
22 are we going; how much is this going to really  
23 cost us? You had that option if you wanted to  
24 exercise it, didn't you?

25 A The owners did review the ETCs when they were

1 presented to the company from the Consortium. So  
2 there were reviews done of the schedules and the  
3 costs. And those cost review often led to  
4 commercial issues or disputes between the  
5 Consortium and others. In fact, leading up to the  
6 2015 case that the company had with the Public  
7 Service Commission, there was a string of  
8 negotiations stemming from a late 2014 estimate to  
9 complete that the Consortium had given to the  
10 others. It was a significant review of cost and  
11 schedule at that point.

12 Q Okay. Thank you, I appreciate that. My question,  
13 though, wasn't -- I wasn't looking for that  
14 answer, but I appreciate it. It's good to have  
15 that information. Your company, however, if so  
16 choose, could have gone outside of asking what  
17 Westinghouse is telling you, because y'all have  
18 already said you didn't trust the, did you? So  
19 why would you not go get an independent analysis  
20 and say, "What is this going to cost us? Are we  
21 going to be in the money or not?" Whether you use  
22 that term, but you know how I'm using it now. Why  
23 didn't y'all do that early on instead of in 2017?

24 A So your question, there was a couple of things in  
25 there. Could you ask that question?

1 Q Sure. I know I might be a little naive about  
2 this, because this is a complicated project. But  
3 there are other people in this world that know how  
4 to come in and give you a cost analysis of that  
5 kind of project. Westinghouse wasn't the only one  
6 out there, were they?

7 A No. Westinghouse is the only one that had all of  
8 the information that would be needed to . . .

9 Q Well, you knew what you had on-site, didn't you?

10 A We certainly knew --

11 Q You knew how far you had gone.

12 A We certainly knew how far we had gone.

13 Q And if something is sitting up the road in  
14 somebody else's yard, that's not on-site, is it?

15 A No. That would be in somebody else's yard.

16 Q Right. So you could figure out, if you wanted to,  
17 in the simplest, the high view, of what we've done  
18 so far and what's left to be done. And I assume  
19 you had the right to look at drawings, didn't you?

20 A We had the right to look at drawings.

21 Q So if you had wanted to go get a cost analysis in  
22 2013 or '14, that could have been done, couldn't  
23 it?

24 A Well, the company did do that with its own people.

25 Q But you said they did it with Westinghouse

1 involved and that's where you weren't getting the  
2 same information that you got from the bankruptcy  
3 people.

4 A We would have to have Westinghouse involved.  
5 Westinghouse, during the bankruptcy process,  
6 became more open and gave us access to information  
7 that they previously had considered to be either  
8 confidential or business proprietary, which is not  
9 unusual in a closed proportion of an EPC contract.  
10 But that also included -- that included not just  
11 schedule and cost but actually information from  
12 subcontracts and some vendors that they were using  
13 to deliver things to the site.

14 Q You said that you, in fact, in fact did that, in  
15 fact did do the analysis. When was that done?

16 A The company did an analysis on a couple of  
17 occasions. And relative to scheduling, the  
18 company did a review of the schedule every month.

19 Q Do you have a report on those?

20 A I don't have a report, but I know that their  
21 construction group had a procedure where they had  
22 a -- had to do a review of the schedule every  
23 month.

24 Q Was that broken down to a report of some kind?

25 A I don't know if it was broken down in a report of

1       some kind. I got the feedback on the schedule  
2       reviews verbally for Mr. Torres, Mr. Jones,  
3       Mr. Archie. And with what the NND team would have  
4       to do is they would have to rely on some  
5       information that came from the contractors,  
6       whether that was Shaw and Westinghouse or CB&I and  
7       Westinghouse or Fluor and Westinghouse, they would  
8       have to rely on some information that came from  
9       the contractors. And the NND team would review  
10      the schedule to make sure all of the aspects of  
11      the schedule were actually in it so that things  
12      were not omitted. And then they would verify that  
13      things were logically tied, such that, you know,  
14      precursor A would have to come before activity B  
15      and that things flowed through to the end. So  
16      there was a schedule review done by my folks that  
17      are much more experienced than I am in reviewing  
18      schedules and looking at schedules. There were  
19      also things that had to track into the schedule  
20      that the Consortium wouldn't necessarily be  
21      concerned with but that SCE&G would have to be  
22      concerned with. Some of the LAR activities, for  
23      example. Training operators, for example. That's  
24      not something that the Consortium would put in the  
25      schedule, but it is something that SCE&G would put



1 in the schedule.

2 Q Okay.

3 A So -- and then we did have a financial team with  
4 accountants and auditors that would review the  
5 cost buildups. And, again, that did lead to a  
6 number of commercial disputes between the  
7 entities.

8 Q So did y'all ever make an analysis, a financial  
9 analysis, and a schedule analysis that was part of  
10 your internal review? I asked you a minute ago,  
11 you could have gone outside. And you said, in  
12 fact, you did that, but you did it with internal  
13 people, didn't you?

14 A Yeah. The internal NND team could have relied on  
15 some external expertise along the way. That would  
16 have been up to them. I don't know that they  
17 didn't use external --

18 Q And so would there be reports that reflected that  
19 analysis?

20 A There may be reports. What I got was verbal. I  
21 know that there was a report of some description  
22 around the August 2014 ETC that the Consortium  
23 gave to the owners, and it was a review of cost  
24 and schedule. So there was a report issued, at  
25 least at that point in time.

1 Q But doesn't that report reflect what you're being  
2 told by Westinghouse?

3 A It certainly would reflect what were being told by  
4 Westinghouse and have a review done by our folks,  
5 by the NND team. And, generally, that was mostly  
6 SCE&G folks but with some Santee Cooper  
7 involvement to review that the schedule made  
8 sense, that the schedule was logical. You would  
9 have to make some assumptions on some of their  
10 inputs. That's true. You would have to make some  
11 other assumptions. And the cost numbers, you  
12 know, I think the SCE&G team was fairly in depth  
13 of figuring out the cost analysis. There were  
14 some closed-book portions that the SCE&G team  
15 would not have access to. But, again, that did  
16 lead to a number of disputes between companies.  
17 So it wasn't a case of, you know, you roll over  
18 and just accept what they had. You would have a  
19 number of disputes.

20 Q So if I were to ever say to a court or a jury that  
21 Westinghouse, until the bankruptcy, never went  
22 outside to get an independent analysis of what's  
23 going on and the cost of future -- the future cost  
24 of the project, would that be a fair statement?

25 A I don't believe so.

1 Q Okay. And I'm asking you. Tell me why that's  
2 not?

3 A Well, you said Westinghouse went outside --

4 Q I apologize. I meant E&G.

5 A Okay.

6 Q Let me rephrase that. Let me start over. If I  
7 were ever to tell a court or a jury that E&G and  
8 SCANA did not go outside of its company and  
9 perform an -- have performed an independent  
10 analysis of what it would take from some point in  
11 time to finish the project, would that be a fair  
12 statement?

13 A Certainly at the point of bankruptcy, SCE&G did do  
14 an internal evaluation of cost of schedule with  
15 information it didn't previously have, and did  
16 employ some outside resources to do that.

17 Q So prior to that it wasn't done?

18 A Prior to that, what I said was the NND team may  
19 have employed -- they certainly did reviews of  
20 schedule and reviews of cost. They may have  
21 employed some external resources in the schedule  
22 review. But generally have the internal resources  
23 with the experience that would have been required  
24 to do those schedule reviews, and, in fact,  
25 outside of the Southern Company project and the

1 Summer project, I don't believe there were experts  
2 out there with Part 52 experience that could have  
3 effectively reviewed the schedule as well as the  
4 folks internally could have.

5 Q What did you get from Westinghouse from the  
6 bankruptcy that you could not have gotten earlier?

7 A There was cost and schedule information, buildups,  
8 commodities, quantities of commodities, unit rates  
9 and then subcontract information from some of the  
10 vendors that Westinghouse was using. Those were  
11 some of things. Now, to get a more accurate  
12 description you would need to talk to the to team  
13 that performed that ETC. It was led by a  
14 gentleman named Kyle Young.

15 Q Kyle Young?

16 A Yeah.

17 Q So I hear what you're saying, but if you had to  
18 get the cost from subs from Westinghouse, an  
19 independent analysis could come up with their own  
20 without having to talk to Westinghouse, couldn't  
21 they?

22 A Well, if they did it without talking to  
23 Westinghouse, you wouldn't know if it is accurate.

24 Q But at least -- when the analysis was done, what  
25 was at least reported to the public, it was

1           astounding to what it would cost, right?

2       A     Say that again.

3       Q     I mean what was the analysis?  What was the  
4           result?  To finish the project, after the  
5           bankruptcy, what would it have cost?

6       A     The exact figure, I don't have.  I think the --  
7           you're talking about the to-go cost or the cost  
8           above the fixed-price option?

9       Q     Well, you didn't have that anymore because  
10          Westinghouse was gone.

11      A     Well, we didn't have the fixed-price contract, but  
12          you were asking for what was the cost.  So you're  
13          asking for what was the cost in excess of what had  
14          been approved?

15      Q     Right.  In other words, what would have been the  
16          increased cost over what you had already gotten  
17          approved?

18      A     I don't remember exactly, but I think it was on  
19          the order of \$2 billion.

20      Q     Only 2 billion?

21      A     Only 2 billion.

22      Q     I mean, a billion here and a billion there becomes  
23          a lot of money, but what was the total cost of the  
24          project that was reflected or was to take?

25      A     I think the SCE&G's portion of the total was

1           around 7.7 billion under the fixed-price option --  
2           under the fixed-price contract.

3     Q     So y'all were willing to pay that?

4     A     Yes.

5     Q     Okay. And Santee was willing to pay theirs, a  
6           little bit smaller than that?

7     A     Right.

8     Q     Okay. And so to get this project finished would  
9           cost an additional 2 billion?

10    A     Again, I said I don't remember the exact number.

11    Q     Approximate?

12    A     I think it was under the order of 2 billion, and  
13           that would have been the E&G portion of it. So it  
14           may have been three-and-a-half to four billion  
15           total when you include the Santee Cooper.

16    Q     Steve, how could your internal people be so off in  
17           2013 '14 when they did this analysis? \$4 billion  
18           off, that's a lot of money.

19    A     Well, I don't know that if you look back at 2013  
20           or '14, that you would've come to the conclusion  
21           that it would have been this far off. So there  
22           was a lot of things that happened in the meantime,  
23           so you're talking about, what, three years to four  
24           years. So there was a lot of things that went on  
25           in that time frame: The Consortium had been

1 broken up; there were commercial disputes between  
2 the Consortium members themselves; there were  
3 lawsuits between the Consortium members  
4 themselves; some of the commodities were obviously  
5 off; how much the commodities were obviously off;  
6 and then you have a new constructor come in. And  
7 every new entity wants to do things their way,  
8 right. So CB&I wanted to do things their way.  
9 Fluor comes in, they want to do things their way.  
10 So I'm not necessarily saying that the Fluor unit  
11 rates were correct, but our team adopted the Fluor  
12 unit rates. So, you know, everybody has their own  
13 bent or slant on how they can do things, their own  
14 means and methods. I do think that Westinghouse  
15 was not mature in the EPC agreement. I think they  
16 tried to bring in that experience with their  
17 Consortium partner, and as they went through  
18 Consortium partners, I don't think that worked  
19 very well for them. But again, there was  
20 information that was not given to our team that  
21 would have allowed them to do the kind of  
22 evaluation you're talking about in order to deal  
23 with that significant amount of cost.

24 Q All right. So let me just get some ballpark  
25 figures. The total cost of the project originally

1 presented to PSC was how much approximately?

2 A You're talking about the 100 percent, Santee and  
3 SCE&G.

4 Q Yes.

5 A It was I think about 9.9 billion. So let's call  
6 it 10 billion.

7 Q Okay. So 10 billion. And with the increases that  
8 were requested and approved, how much did the  
9 total cost go to?

10 A When the fixed-price option was approved, it would  
11 have been about, in the ballpark, about 14.

12 Q And then the analysis after bankruptcy would have  
13 added another 4 billion?

14 A I think it was around that number. Again, I'm  
15 going off memory and I don't know that it's  
16 accurate, but it's --

17 Q So that's where the total of about 18 billion. So  
18 out of the 14 projected, cost after approval, how  
19 much was actually paid out of the 14 billion?

20 A I think the number was on the order of nine.

21 Q So if someone just in general with those numbers,  
22 someone coming in would have to spend another nine  
23 billion to finish the project?

24 A That would be about right.

25 Q So someone coming in today would have to spend



1 almost as much as the original contract called  
2 for.

3 A Correct.

4 Q So I represent the customers of SCE&G. And we run  
5 into people all the time that want to talk about  
6 the case. You can imagine. And they ask the  
7 question, "How could someone not figure this out  
8 and be so off?" And I keep telling them, "It's  
9 not your fault; you're just a customer." They  
10 say, "I know, but we're having to pay the rate."  
11 So whose fault was all of this? Did y'all not  
12 have any blame in overseeing what was happening  
13 and taking a quicker step to cut it off? And the  
14 reason I ask that, and I'll ask the question: If  
15 Lonnie Carter asked one of his first letters, "We  
16 need to review our options." And one of those  
17 options could have been back in '13 to declare the  
18 contract over. There were so many things done  
19 wrong by Westinghouse, I'm assuming that would  
20 have been an option. So if that had taken place  
21 and everybody had stepped back and said, "Let's  
22 get this project rebuilt" you could have at least,  
23 at that time, have said should we go forward or  
24 not. Could that not have been the case?

25

1 MR. BALSER: I object to everything.

2 MR. BELL: Everything?

3 MR. BALSER: Well, everything except for the  
4 last sentence in which you actually asked the  
5 question.

6 MR. BELL: Come on? Everything?

7 MR. BALSER: Everything.

8

9 Q All right. Steve, this is an important question  
10 to me, and I'm not sure it has much legal impact,  
11 but it is a curiosity of the man and woman on the  
12 street, is you guys, SCE&G, were the ones  
13 overseeing the project, correct?

14 A Correct.

15 Q And the PSC in fact said in one of their orders  
16 Westinghouse didn't have a duty to the customer;  
17 y'all did. Do you remember that?

18 A I don't remember.

19 Q It's in one of the orders. Actually, it's kind  
20 of -- they don't have the duty to the customer but  
21 you, SCANA, SCE&G do. But you don't deny that, do  
22 you?

23 A No.

24 Q Okay. So I think of my young son who is different  
25 than my young daughter because he's always not

1       doing his homework and she always does hers. When  
2       does it come to the point you take away the  
3       skateboard and the screens and how long do you let  
4       it go before you cut it off? That's not a hard  
5       example, I understand this. So my question to you  
6       is Lonnie Carter said in 2012/13, "We got to look  
7       at our options." Did y'all ever consider that  
8       that maybe we could say, "Let's stop; let's look  
9       at the cost going forward to see if these people  
10      that have proven -- almost proven that they were  
11      incompetent. That we're just going to continue to  
12      pay for the incompetence." Was that ever  
13      considered or talked about?

14  
15           MR. BALSER: Object to the prefatory remarks  
16      of the skateboards and screens.

17  
18    A     Let me see if I can explain to what I know about  
19      this. Certainly there were times over the life of  
20      this project that the owners, SCE&G and Santee  
21      Cooper, looked at what they could do and what  
22      their options were. Certainly there were times  
23      over the life of this project that companies were  
24      not happy with the progress being made by the  
25      Consortium, whether that Consortium was

1 Westinghouse and Shaw or Westinghouse and CB&I.  
2 At each step where there problems or issues, the  
3 owners attempted to remedy those issues by a  
4 variety of methods. Now, firstly, you're going to  
5 ask the Consortium to try to do better. And there  
6 are a slew of what are called "project letters"  
7 from the owners to the Consortium to say we're not  
8 happy with what you're doing here, please improve.  
9 You've seen some examples of things like that  
10 here. This wasn't a Consortium letter, but it was  
11 a letter to the Consortium members that really  
12 angered their parent company, Toshiba. There were  
13 mitigations that were attempted. Some of them  
14 successful; some of them were not successful.  
15 There were changes in plans. There were changes  
16 in schedule launching. The owners withheld money  
17 to try to force the Consortium to, you know --  
18 convince them that we're serious and try to push  
19 them towards completion. We had seen that the  
20 litigation, whatever it was at Southern, didn't  
21 seem to be having any positive impact on the  
22 Southern Company project. Your premise that the  
23 owners could have simply just said stop, kick  
24 Westinghouse to the curb, and decide to continue  
25 is faulty. The owners had a contract with a

1 Consortium. The owners didn't want to breach that  
2 contract. What you're proposing would have been a  
3 breach of that contract.

4 Q If the other side --

5 A I'm trying to answer question --

6 Q Yes, sir but --

7 A I'm trying to answer the question --

8 Q -- you're filibustering.

9 A No, I'm not filibustering. You asked me a  
10 question about -- and you said it was hard  
11 question. So you asked me a question why didn't  
12 the owners do this.

13 Q I asked you did --

14 A Did the owners ever do this --

15 Q -- did you think about that as an option?

16 A So I'm telling you that the owners didn't think  
17 about a lot of those things. So not only did the  
18 owners consider what actions they could take, they  
19 took actions: withholding money, trying to help  
20 the Consortium, threatening the Consortium, going  
21 to visit the Consortium's boss, if you will. So,  
22 you know, there were a lot of things that were  
23 done. Certainly, you know, the company threatened  
24 the Consortium with litigation. They threatened  
25 the owners with litigation. But to do what you're

1 suggesting would have been a breach of contract  
2 and that would have been embroiled in a much  
3 longer legal dispute. Once Westinghouse was  
4 selected and the license was issued, the owners  
5 then needed to go with Westinghouse. So to kick  
6 Westinghouse to the curb and select somebody else  
7 would have meant starting over, starting from  
8 scratch with another vendor that may have not been  
9 any better.

10 Q That's what you would have had to once the  
11 bankruptcy was done, wasn't it?

12 A Not the case. So the owners did consider that.  
13 And even if the owners tried to make the case that  
14 Westinghouse was in breach, there wasn't anything  
15 there was obvious to say they're in breach. And  
16 that would have resulted in litigation between the  
17 owners and the Consortium. So then construction  
18 stops, the workforce that we've now trained goes  
19 away. All the field non-manual personnel go away.  
20 A lot of their own people -- it's the hiring for  
21 SCE&G staff that went from a handful up to about  
22 650 by the time the project stopped. So in this  
23 2013 time frame we may have been at 400 people.  
24 Those people go away. And so stopping the  
25 project, even for a period of time, once you lose

1       those resources, then getting them back is very  
2       difficult training them again. It's very  
3       difficult, particularly with licensed operators  
4       and nuclear technicians.

5               So, yeah, it was contemplated what would  
6       happen if we stopped, what would happen if we  
7       tried to make a pitch for Westinghouse being in  
8       breach. Now, some of those discussions were with  
9       our attorneys that my colleague will remind me I'm  
10      not supposed to talk about. But those kind of  
11      things were considered. And it wasn't until the  
12      bankruptcy when Westinghouse was clearly in breach  
13      that we had the access to the information. And  
14      the plan to go forward was a plan to go forward  
15      with Westinghouse still involved. So Westinghouse  
16      was still an entity in bankruptcy; they would  
17      still be involved in the project, though not  
18      leading construction. So that was the change that  
19      was contemplated after the bankruptcy.

20              So what you're suggesting, yes the owners did  
21      mull that over. And the potential ramifications  
22      or consequences of that were also very  
23      significant.

24      Q     You can't talk about that because you had  
25      attorneys involved?

1 A I think I've talked about it, but the specifics  
2 about what I discussed with the attorneys relative  
3 to the breach discussions, I don't think I can  
4 talk about.

5 Q Well, I have to ask it, and I might get an  
6 objection. But you said something a minute ago  
7 that Westinghouse was not in a breach. Is that  
8 your opinion or is that something you were told?

9  
10 MR. BALSER: Object to the extent that it  
11 calls for disclosure attorney-client privilege.  
12 Thank you. To the extent you can answer it  
13 without revealing attorney-client privilege  
14 information, you can answer it.

15  
16 A And I think that would difficult for me to talk  
17 about without revealing privileged conversations.

18 Q Okay. I mean, what would they have had to done?  
19 I mean, in all seriousness, what would they have  
20 had to have done to be in breach of this damn  
21 contract?

22 A Well, your premise is that just because they're  
23 late or just because it's costing more money means  
24 that they're in breach, and that's not necessarily  
25 the case. So the remedy in the contract for



1           somebody being late is liquidated damages. So the  
2           Consortium did send us at times project letters  
3           indicating what our remedies would be for those  
4           things.

5    Q       So Mr. Carter was suggesting along these lines  
6           that's that it's time to get a third-party --  
7           outside third-party in to take a look at things?

8    A       When are we talking about here.

9    Q       2013?

10   A       Are you referring to something that we've been  
11           discussing?

12   Q       Well, I'm just kind of moving on.

13   A       Okay.

14   Q       Do you recall before the Bechtel Group was brought  
15           in that Mr. Carter actually they met with Bechtel  
16           Group. You heard about that?

17   A       I'm aware that Santee Cooper met with Bechtel  
18           before SCE&G knew about it, yes.

19   Q       Okay. And do you know the length of time from the  
20           time of that meeting to the time that Bechtel was  
21           finally engaged?

22   A       I don't.

23   Q       Okay. Now, who is Michael Crosby? Is he a Santee  
24           Cooper guy?

25   A       Yes.

1 Q Now, this is Exhibit No. 8, ORS 00006114 through  
2 6116. Again, the red mark's ours. We agree to  
3 remove them at a later time. All right.

4  
5 (Whereupon, E-mail Correspondence was  
6 marked Exhibit No. 8 for  
7 identification.)  
8

9 Q This is dated October 14, 2015. Do you see that?

10 A Yes.

11 Q Okay. Now, this is after or before the final  
12 Bechtel report came out?

13 A This was before.

14 Q Remember the date on the Bechtel? I don't have it  
15 right off.

16 A Bechtel gave what they called a preliminary  
17 presentation to the owners on October 22nd. And  
18 the Bechtel final report was dated in February, I  
19 think was February 5, 2016.

20 Q February, all right. So the initial report to the  
21 owners, was that the draft report?

22 A No. The initial report of the owners was a  
23 presentation and it was from October 22nd.

24 Q Did they have a PowerPoint?

25 A They had a PowerPoint, yes.

1 Q Okay. I think I've seen that. I'm not sure. But  
2 have you seen a draft report?

3 A No.

4 Q You haven't? Were you aware of a draft report?

5 A No.

6 Q Draft November 9, 2015. I guess that would have  
7 been after the October 22nd meeting?

8 A What's the date on it?

9 Q November 9.

10 A Would have been after October 22nd, yes.

11 Q So that would have been after the owners meeting?

12 A Correct.

13 Q All right. So this e-mail of Mr. Carter to  
14 Michael Crosby says, "Carl has provided you and me  
15 preliminary bullet notes from the assessment."  
16 Who is Carl, do you know?

17 A Well, first of all, this is not a memo that I  
18 was --

19 Q Sure. This is Santee Cooper. That's right.

20 A -- Santee Cooper. I imagine that Carl was Carl  
21 Rau (ph).

22 Q Okay. And who was he?

23 A He was, at the time, I think a contractor or  
24 consultant to Bechtel.

25 Q Very good. And it says, "Carl has provided you

1           and me preliminary bullet notes from the  
2           assessment. See below. SCE&G has not seen this  
3           yet." The next line says, "I do not see any real  
4           surprises. The Bechtel projection on commercial  
5           operation dates is sobering." So remember I asked  
6           you a little earlier about could you have gone out  
7           in 2013 and 2014 and gotten an independent  
8           analysis. This wasn't a cheap analysis. I think  
9           it cost, what? A million dollars?

10       A     Correct.

11       Q     Okay. But it was -- someone was able to do it or  
12           some company was able to do it, right?

13       A     Bechtel was able to do something. The question  
14           was it accurate. So the feeling that SCE&G was  
15           that it was not accurate.

16       Q     So now we get to where Santee Cooper thinks it was  
17           accurate. You've heard that hadn't you?

18       A     I don't know that I ever heard Santee Cooper  
19           thought it was accurate.

20       Q     Okay. You said they didn't seem any surprised,  
21           but that may not be the same as thinking it's  
22           accurate.

23       A     I think when he says, "don't see any real  
24           surprises" and then it says something was  
25           "sobering" I think that would be a surprise.

1 Q Okay. "Once a CEO meeting is scheduled, Carl will  
2 work the schedule and sit down with Byrne . . ."

3 I guess that's you?

4 A It would be me.

5 Q "And me," that would be Michael Crosby. Did y'all  
6 have the sit down?

7 A I don't recall having a sitdown meeting.

8 Q Who is Jeff Archie?

9 A Jeff Archie is the chief nuclear officer for  
10 SCE&G.

11 Q "And also a separate meeting which Jeff Archie's  
12 staff, but he needs to get you," which would be  
13 Michael --

14 A Lonnie.

15 Q Lonnie Carter, "and Kevin nailed down first. Per  
16 Carl, the CEO meeting is looking like the 22nd,"  
17 which is what you mentioned earlier, "or 23rd.  
18 Marty told me your schedule is better." So now,  
19 Carl Rau sends a note on the 13th, which is a day  
20 earlier, "Michael, the attached is hot off the  
21 press. Preliminary assessment, which will form  
22 the basis of our presentation to the execs. I did  
23 not include recommendations, as they are still in  
24 development and will be part of the exec review."  
25 Is that what -- did I read it correctly?

1 A You did read it correctly.

2 Q Okay. Did you see the preliminary assessment?

3 A If what Carl means by preliminary assessment was  
4 the presentation given to the owners on  
5 October 22nd, I did.

6 Q So probably a draft of the bullet points or the  
7 PowerPoint?

8 A It was labeled preliminary. I don't -- that's  
9 what I remember about it.

10 Q But you did see that?

11 A I did.

12 Q Now, it says the Scope of the Assessment. The  
13 first point says evaluate the status of the  
14 project to assess the Consortium's ability to  
15 complete the project on the forecasted schedule.  
16 That was an important thing to know, wasn't it?

17 A Would be an important thing to know?

18 Q It's important to know whether the Consortium  
19 could complete the project on that forecasted  
20 schedule?

21 A An assessment of Consortium's ability to meet  
22 schedule was -- complete the project on the  
23 forecasted schedule. And assessment of the  
24 Consortium's ability to meet schedule was -- would  
25 have been important, yes.

1 Q Right. And they actually evaluated it from a  
2 third-party which had not -- Bechtel had been  
3 involved a little bit in the project, hadn't they?

4 A They had been involved up front with the  
5 development of the combined operating license. It  
6 was a different group within Bechtel.

7 Q I think back in 2010 or something like that?

8 A Earlier than that, probably. Yeah, earlier.  
9 Early in the project, yes.

10 Q Okay. And then Bechtel's focus wasn't on the  
11 cost, so that's -- we talked about that. And this  
12 team consisted of some of the . . . Now, let's go  
13 to the next page, please, Steve. The first bullet  
14 point on the top of the page, if you'll read that,  
15 please.

16 A "Project management approach used by the  
17 Consortium does not provide appropriate visibility  
18 and accuracy on project progress and performance."

19 Q Do you agree with that?

20 A No, I'm not sure that I would agree with that.

21 Q Who is the -- who was the project manager? Would  
22 that be SCE&G?

23 A The project management approach used by the  
24 Consortium, they're referring to the Consortium of  
25 the time it was CB&I and Westinghouse.

1 Q And then let's go to the second one. Would you  
2 read that, please.

3 A "There is a lack of accountability in various  
4 departments in both the owner's and the  
5 Consortium's organizations."

6 Q Do you agree with that?

7 A I would not agree with it from the owner's  
8 organization, no.

9 Q Eventually, the reporter, I guess, expands or  
10 explains that bullet point?

11 A I don't recall. I'm sure we'll see it.

12 Q Right. And then the next one says, you can read  
13 it, please.

14 A "The current hands-off approach taken by the  
15 owners toward management of the Consortium does  
16 not allow for real-time, appropriate cost and  
17 schedule mitigation."

18 Q Do you agree with that?

19 A No, I would not agree that there was a hands-off  
20 approach taken by the owners at all.

21 Q Okay. And then the third one I think we skipped  
22 says "The Consortium's lack a project management  
23 integration is a significant reason for the  
24 current construction installation issues and  
25 project schedule delays." See that?



1 A I do.

2 Q You agree with that?

3 A I think there's probably at least something there,  
4 yes.

5 Q It uses the term "resolution of constructability  
6 issues." You recall in another documents -- and I  
7 can't pull them right now -- but the  
8 constructability issues related to -- mostly to  
9 plans not being finished or plans on hold?

10 A The constructability issues generally refer to a  
11 specific design, not being constructable by the  
12 construction. So you have a design engineer that  
13 designs something one way, and when the field goes  
14 to install it, they say, "I can't do this."  
15 Sometimes it's, "I don't want to do this" or it's  
16 "there's a better way to do this" or "this is  
17 difficult for us to do." So constructability  
18 reviews get linked into that. So sometimes it's  
19 actually preference of the constructor. But it's  
20 a difference between what the design engineer  
21 believes can be done easily the field and what the  
22 field thinks can be done easily in the field.

23 Q The next bullet point talks about the Westinghouse  
24 and the CB&I relationship was extremely poor. Do  
25 you agree with that?

1 A I think that the Westinghouse and CB&I  
2 relationship on-site wasn't bad. I think at the  
3 executive level I believe that the relationship  
4 was strained. And in fact, you know, at this  
5 point in time the Consortium had come to the  
6 owners and said CB&I wants out of the project, and  
7 Westinghouse said we want to let CB&I out of the  
8 project. So, yes it was -- that was not a  
9 surprise.

10 Q What does the term "commercial issues" mean in  
11 relation to this bullet point? The "relationship  
12 is extremely poor caused to a large extent by  
13 commercial issues"?

14 A I can only tell you what I know about commercial  
15 issues between Consortium members. So what  
16 they're now referring to here, I don't believe  
17 commercial issues between the owners and the  
18 Consortium. I believe that the Consortium members  
19 themselves had some commercial issues, so --

20 Q Commercial, what does that mean?

21 A Just cost, cost issues. Cost or terms. So, you  
22 know, if CB&I has agreed that they'll use their  
23 facility to fabricate something and that's  
24 fixed-price and Westinghouse sends a design change  
25 and CB&I now cannot pass that cost along to the

1 owners because it's fixed-price, then CB&I would  
2 have an issue with Westinghouse because it's  
3 costing more money for CB&I and Westinghouse is  
4 the one that's issuing the design change. So  
5 there would be commercial dispute, just an  
6 example.

7 Q But would the owners be responsible for design  
8 changes on the fixed-price?

9 A That why I say it's a commercial dispute between  
10 the Consortium members themselves because that  
11 cost cannot be passed on to the others.

12 Q What if the designed change that was not the fault  
13 of anybody, that maybe they should have known  
14 better to design it different or what would -- why  
15 would y'all not have -- why would the owners not  
16 have been responsible?

17 A When the owners fixed the price of the modules  
18 then they were fixed-price. So if the design  
19 needed to change, that was on the designer and the  
20 constructor, not the owner. So that's the -- that  
21 was the EPC arrangement.

22 Q Okay.

23 A Now, there was a -- there would be, if there was a  
24 change in law, the provision to allow them to get  
25 a change order for them. And there were other --

1 type issues, but that's not really -- you know,  
2 that's not a design change.

3 Q So the next red box is bullet point 1. It says,  
4 "Our preliminary assessment of the project  
5 schedule is that the commercial operation dates  
6 will be extended. And the Unit 2 is another 18 to  
7 26 months past June 2019. And Unit 3, 24 to 32  
8 months past June 20, 2020, with a 50 to 75 percent  
9 probability." Do you agree with that?

10 A Did I agree with it?

11 Q Do you agree with it, I guess?

12 A No. I didn't agree with it.

13 Q Okay. But if that's true, that's a long way out,  
14 isn't it?

15 A It is a long way from the current forecasted . . .

16 Q From -- let's just say this is  
17 November/December 2015. The project shut down in  
18 what month in '17?

19 A July.

20 Q July.

21 A July 31.

22 Q Two-and-a-half years. From October or  
23 November 2015 to July 2017, what percentage of the  
24 project had been completed? In other words, how  
25 much did you gain on the final product? Isn't

1           there some numbers out there that --

2       A     There certainly are. I would be going from memory  
3           and I don't know where the project stood at that  
4           this point. When the project was finished -- when  
5           the project was canceled, I believe it was just  
6           over 36 percent construction complete. And the  
7           Consortium looked at completion in terms of four  
8           factors. So they looked at engineering,  
9           procurement, construction and start up. I gave  
10          you a number that was composite of those four  
11          things, and I think they were about 60 some  
12          percent complete at termination. But the  
13          construction percent complete, I think there's 36  
14          point something.

15       Q     Do you remember the numbers of all four of  
16           those --

17       A     I don't.

18       Q     -- categories?

19       A     I don't.

20       Q     Is there a document somewhere that would say that?

21       A     Yes.

22       Q     Do remember what kind of document it was?

23       A     I think you'll find that in the BLRA quarterly  
24          report.

25       Q     Okay, good. Was the extended timeframe reported

1 to, at least the one that Bechtel did, reported to  
2 PSC?

3 A No.

4 Q Was the extended time frame by Bechtel reported to  
5 the public?

6 A No.

7 Q Was the extended time frame reported to investors  
8 or potential financial buyers?

9 A No.

10 Q The next box says, "The Consortium's forecast for  
11 schedule durations, productivity forecasted  
12 manpower peaks, and percent complete are  
13 unrealistic." Do you agree with that?

14 A Not all of it. So, the productivity, I would say  
15 yes, I believe that. The forecasted manpower  
16 peaks, no, I would not believe that. I don't know  
17 what they mean by percent complete are  
18 unrealistic. I think percent complete was what it  
19 was.

20 Q What are they talking about, the forecast?

21 A Forecast percent complete, again, I'm not sure  
22 what they mean by forecast percent complete or how  
23 that would differ from schedule duration.

24 Q Would you read the next box, please.

25 A Okay. "The owners do not have an appropriate

1 project controls team to assess/validate  
2 Consortium reported progress and performance."

3 Q Do you agree with that?

4 A No. No, I don't agree with that. This is one of  
5 the reasons why I was trepidatious about having  
6 Bechtel do the evaluation in the first place, is  
7 that I believe that they were looking for work on  
8 the project. Some of the things that I saw in the  
9 report were indicative of the fact that I believe  
10 that they were looking for work on the project.

11 Q In layman's terms, you think they fudged the  
12 report to get some work?

13 A I think that they embellished some of these points  
14 where they could slot themselves in to help out.

15 Q You agree that construction productivity was poor?

16 A I think productivity was poor, yes.

17 Q Did you agree that manual and non-manual overtime  
18 was negatively affecting productivity?

19 A No, I'm not sure that that was the case.

20 Q Did you agree that CB&I's work planning procedures  
21 were overly complex and inefficient?

22 A I do think that there were -- there's certainly  
23 room for improvement in CB&I's work process and  
24 procedures, yes.

25 Q I'm not sure I understand the next bullet point,

1           which is the indirect to direct ratio. What does  
2           that mean, those two terms?

3       A     On any construction project you have direct craft.  
4           And the direct craft would be people that actually  
5           get credit for doing work. So if I'm welding  
6           something together, the welder is a direct craft.  
7           The indirect craft would be people that support  
8           the direct craft, so if I have a scaffold that  
9           needs to be built to get that welder up to weld  
10          this component, the scaffold builder is the direct  
11          craft.

12       Q     I got you.

13       A     So there are direct craft and indirect craft.

14       Q     Administrative personnel would be indirect?

15       A     Administrative personnel would be field  
16          non-manual.

17       Q     You can out maneuver me in those areas, now.  
18          Field non-manual turnover is high at 17.4 percent.  
19          Do you agree with that?

20       A     Do I agree with the number or that it's high?

21       Q     That it was high?

22       A     I would say that's probably high.

23       Q     And do you have any reason to think the number's  
24          wrong?

25       A     I don't. I just validate the number.



1 Q Sure. "The current construction percent complete  
2 per month is one-half percent versus plan of  
3 1.3 percent." Do you think that's reasonably  
4 accurate?

5 A I certainly know there were times when a  
6 .5 percent per month would have been accurate.  
7 But I don't know that at this point time it was  
8 accurate. I'm not saying it wasn't, I just don't  
9 know that it wasn't. And when Fluor came in, they  
10 were able to increase that percent complete per  
11 month fairly significantly.

12 Q They complemented the safety. Y'all were good  
13 about things like that?

14 A I think the Consortium did a fairly good job with  
15 safety.

16 Q Okay. And the last page, please. And the first  
17 one says, "Resolution of many engineering and  
18 design coordination reports is behind schedule."  
19 Do you agree with that?

20 A Yes, I would.

21 Q And did you agree that the backlog was not getting  
22 better but getting worse?

23 A I would agree with the statement here that says  
24 "the backlog is not decreasing."

25 Q The third bullet point down says, "There is

1 significant engineering and licensing workload  
2 remaining for electrical design, I&C, post  
3 construction design completion, ITAAc closure,  
4 etc. Much of this remaining engineering will  
5 potentially impact construction." What is he  
6 basically saying? What does that mean?

7 A That there's a significant amount yet of  
8 engineering workload. Even if things like the  
9 issue for construction, drawings were 100 percent  
10 complete, there are still engineering workload  
11 that has a take place.

12 Q To be done?

13 A To be done. So some of that could have a  
14 potential impact of construction.

15 Q Were the owners or the Consortium in charge of the  
16 LAR work?

17 A The short answer is. The owners would submit the  
18 LARs to the Nuclear Regulatory Commission. In  
19 large measure, the engineering work from the LARs  
20 would have to come from Westinghouse because it  
21 was their design. It had to be a collaborative  
22 effort.

23 Q So this report or these notes actually  
24 complemented the work on the LARs?

25 A Yes.

1 Q You agree with that?

2 A Yes. I'm not surprised.

3 Q Then it said there's procurement problem,  
4 disconnect between construction need dates and  
5 procurement dates. There was 457 open WEC and  
6 2907 open CB&I. Is that high?

7 A The short answer is I'm not sure for a megaproject  
8 if that's high or not.

9 Q They were basically saying that procurement was  
10 being -- was late because it interfered with the  
11 construction needs. Is that correct?

12 A That's correct.

13

14 MR. BELL: Let's go ahead and take a short  
15 break. I think we're at the end at the tape  
16 anyway.

17 THE WITNESS: This concludes video number 3  
18 in the video deposition of Stephen Byrne. The  
19 time is approximately 4:44 p.m. We are now off  
20 the record.

21 - - - - -

22 (Whereupon, there being no further  
23 questions, the deposition concluded at  
24 4:45 p.m.)

25

CERTIFICATE

Be it known that the foregoing  
Deposition of STEPHEN A. BYRNE was taken by Heather R.  
Landry, CVR;

That I was then and there a notary  
public in and for the State of South Carolina-at-Large;

That the witness was sworn by me or  
administered an oath of affirmation to testify the  
truth, the whole truth, and nothing but the truth,  
concerning the matter in controversy aforesaid;

The foregoing transcript represents  
a true, accurate and complete transcription of the  
testimony so given at the time and place aforesaid to  
the best of my skill and ability;

That I am not related to nor an  
employee of any of the parties hereto, nor a relative  
or employee of any attorney or counsel employed by the  
parties hereto, nor interested in the outcome of this  
action.

Witness my hand and seal this 22nd day of  
August 2018.

  
\_\_\_\_\_  
Heather R. Landry, CVR

Notary Public for South Carolina  
My Commission Expires: April 10, 2024

**This transcript may contain quoted material. Such  
material is reproduced as read or quoted by the  
speaker.**

In the matter of: Richard Lightsey et al.  
vs. SCE&G et al.

Deponent: Stephen A. Byrne

Date of Deposition: August 14, 2018

DECLARATION UNDER PENALTY OF PERJURY

I declare under penalty of perjury  
that I have read the entire transcript of  
my Deposition taken in the captioned matter  
or the same has been read to me, and  
the same is true and accurate, save and  
except for changes and/or corrections, if  
any, as indicated by me on the DEPOSITION  
ERRATA SHEET hereof, with the understanding  
that I offer these changes as if still under  
oath.

Signed on the \_\_\_\_\_ day of  
\_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_

DEPOSITION ERRATA SHEET

Page No. \_\_\_\_\_ Line No. \_\_\_\_\_ Change to: \_\_\_\_\_

Reason for change: \_\_\_\_\_

Page No. \_\_\_\_\_ Line No. \_\_\_\_\_ Change to: \_\_\_\_\_

Reason for change: \_\_\_\_\_

Page No. \_\_\_\_\_ Line No. \_\_\_\_\_ Change to: \_\_\_\_\_

Reason for change: \_\_\_\_\_

Page No. \_\_\_\_\_ Line No. \_\_\_\_\_ Change to: \_\_\_\_\_

Reason for change: \_\_\_\_\_

Page No. \_\_\_\_\_ Line No. \_\_\_\_\_ Change to: \_\_\_\_\_

Reason for change: \_\_\_\_\_

Page No. \_\_\_\_\_ Line No. \_\_\_\_\_ Change to: \_\_\_\_\_

Reason for change: \_\_\_\_\_

Page No. \_\_\_\_\_ Line No. \_\_\_\_\_ Change to: \_\_\_\_\_

Reason for change: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_

DEPOSITION ERRATA SHEET

Page No. \_\_\_\_\_ Line No. \_\_\_\_\_ Change to: \_\_\_\_\_

Reason for change: \_\_\_\_\_

Page No. \_\_\_\_\_ Line No. \_\_\_\_\_ Change to: \_\_\_\_\_

Reason for change: \_\_\_\_\_

Page No. \_\_\_\_\_ Line No. \_\_\_\_\_ Change to: \_\_\_\_\_

Reason for change: \_\_\_\_\_

Page No. \_\_\_\_\_ Line No. \_\_\_\_\_ Change to: \_\_\_\_\_

Reason for change: \_\_\_\_\_

Page No. \_\_\_\_\_ Line No. \_\_\_\_\_ Change to: \_\_\_\_\_

Reason for change: \_\_\_\_\_

Page No. \_\_\_\_\_ Line No. \_\_\_\_\_ Change to: \_\_\_\_\_

Reason for change: \_\_\_\_\_

Page No. \_\_\_\_\_ Line No. \_\_\_\_\_ Change to: \_\_\_\_\_

Reason for change: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_